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TITLE 4

BUSINESS AND COMMERCIAL LAW

(CHAPTERS 25-40 IN VOLUME 2B; CHAPTERS 41-117 IN
VOLUME 2C)

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SUBTITLE 1. UNIFORM COMMERCIAL CODE

CHAPTER 1

GENERAL PROVISIONS

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4-1-109. [Transferred.]

4-1-101. Short titles.

(a) This subtitle may be cited as the Uniform Commercial Code.

(b) This chapter may be cited as Uniform Commercial Code —
General Provisions.**History.** Acts 1961, No. 185, § 1-101;
reen. 1967, No. 303, § 1 (1-101); A.S.A.
1947, § 85-1-101; Acts 2005, No. 856, § 1.**RESEARCH REFERENCES****Ark. L. Rev.** Evolving Sales Law: High-
lights of the Shifting Landscape of Arkan-
sas Purchasing Law, 57 Ark. L. Rev. 835.**U. Ark. Little Rock L. Rev.** Survey ofLegislation, 2005 Arkansas General As-
sembly, Business Law, 28 U. Ark. Little
Rock L. Rev. 321.**4-1-102. Scope of subtitle.**This chapter applies to a transaction to the extent that it is governed
by another chapter of this subtitle.**History.** Acts 1961, No. 185, § 1-102;
reen. 1967, No. 303, § 1 (1-102); A.S.A.
1947, § 85-1-102; Acts 2005, No. 856, § 2.**4-1-103. Construction of subtitle to promote its purposes and
policies — Applicability of supplemental principles
of law.**(1) This subtitle shall be liberally construed and applied to promote
its underlying purposes and policies, which are:(a) to simplify, clarify, and modernize the law governing commercial
transactions;(b) to permit the continued expansion of commercial practices
through custom, usage, and agreement of the parties; and

(c) to make uniform the law among the various jurisdictions.

(2) Unless displaced by the particular provisions of this subtitle, the
principles of law and equity, including the law merchant and the law
relative to capacity to contract, principal and agent, estoppel, fraud,
misrepresentation, duress, coercion, mistake, bankruptcy, and other
validating or invalidating cause supplement its provisions.**History.** Acts 1961, No. 185, § 1-103;
reen. 1967, No. 303, § 1 (1-103); A.S.A.
1947, § 85-1-103; Acts 2005, No. 856, § 3.

CASE NOTES

Cited: Metro. Nat'l Bank v. La Sher Oil Co., 81 Ark. App. 269, 101 S.W.3d 252 (2003).

4-1-105. Severability.

If any provision or clause of this subtitle or its application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are severable.

History. Acts 1961, No. 185, § 1-108 as added by 1967, No. 303, § 1 (1-108); 2005, No. 856, § 5.

A.C.R.C. Notes. This section was formerly codified as § 4-1-108.

Publisher's Notes. Former § 4-1-105, concerning parties' power to choose applicable law, was repealed by Acts 2005, No.

856, § 4. The former section was derived from Acts 1961, No. 185, § 1-105; reen. 1967, No. 303, § 1 (1-105); 1973, No. 116, § 2; A.S.A. 1947, § 85-1-105; Acts 1991, No. 344, § 2; 1991, No. 540, § 2; 1993, No. 439, § 2; 1995, No. 425, § 2; 1997, No. 1070, § 2; 2001, No. 1439, § 2.

4-1-106. Use of singular and plural — Gender.

In this subtitle, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

History. Acts 2005, No. 856, § 6.

Publisher's Notes. Former § 4-1-106, concerning administration of remedies, was repealed by Acts 2005, No. 856, § 4.

The former section was derived from Acts 1961, No. 185, § 1-106; reen. 1967, No. 303, § 1 (1-106); A.S.A. 1947, § 85-1-106.

4-1-107. Section captions.

Section captions are part of this subtitle.

History. Acts 1961, No. 185, § 1-109; as added by 1967, No. 303, § 1 (1-109); A.S.A. 1947, § 85-1-110; Acts 2005, No. 856, § 7.

A.C.R.C. Notes. This section was formerly codified as § 4-1-109.

Publisher's Notes. Former § 4-1-107,

concerning waiver or renunciation of claim or right after breach, was repealed by Acts 2005, No. 856, § 4. The former section was derived from Acts 1961, No. 185, § 1-107; reen. 1967, No. 303, § 1 (1-107); A.S.A. 1947, § 85-1-107.

4-1-108. Relation to electronic signatures in Global and National Commerce Act.

This subtitle modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this subtitle modifies, limits, or supersedes

15 U.S.C. § 7001(c) or authorizes electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

History. Acts 2005, No. 856, § 8. has been renumbered by Acts 2005, No. 856, § 5 as § 4-1-105.
Publisher's Notes. Former § 4-1-108

4-1-109. [Transferred.]

Publisher's Notes. Former § 4-1-109 has been renumbered by Acts 2005, No. 856, § 7 as § 4-1-107.

PART 2 — GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

SECTION.	SECTION.
4-1-201. General definitions.	4-1-205. Reasonable time — Seasonable-
4-1-202. Notice — Knowledge.	ness.
4-1-203. Lease distinguished from secu-	4-1-206. Presumptions.
rity interest.	4-1-207 — 4-1-209. [Repealed.]
4-1-204. Value.	

4-1-201. General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of this subtitle that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other chapters of this subtitle that apply to particular chapters or parts thereof:

(1) “Action”, in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 4-1-303.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this subtitle as supplemented by any other applicable laws.

(13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

(14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) “Delivery”, with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except otherwise provided in chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from a "third party", means a person that has engaged in a transaction or made an agreement subject to this subtitle.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint

venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 4-2-401, but a buyer may also acquire a "security interest" by complying with chapter 9. Except as otherwise provided in § 4-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 4-2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 4-1-203.

(36) "Send" in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) “Surety” includes a guarantor or other secondary obligor.

(40) “Term” means a portion of an agreement that relates to a particular matter.

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) “Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.

(43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

History. Acts 1961, No. 185, § 1-201; 1967, No. 303, § 2 (1-201); 1973, No. 116, § 2; 1985, No. 514, § 1; A.S.A. 1947, § 85-1-201; Acts 1991, No. 572, §§ 1-3; 1993, No. 439, § 3; 2001, No. 1439, § 3; 2005, No. 856, § 9; 2007, No. 342, §§ 2, 3, 4, 5, 6, 7.

Amendments. The 2007 amendment, in (b)(5), inserted “a person in control of a negotiable electronic document of title or” and “negotiable tangible”; in (b)(6), inserted “of title” and “directly or indirectly” in the first sentence and added the last

sentence; in (b)(15), inserted “an electronic document of title means voluntary transfer of control and with respect to” and “a tangible”; rewrote (b)(16); in (b)(21), inserted “negotiable tangible” in (B), added (C) and made a related change; and substituted “document of title” for “receipt” in (b)(42).

U.S. Code. The reference to the federal bankruptcy law in (23)(C) is probably a reference to the Bankruptcy Code of 1978, which is codified as 11 U.S.C. § 1 et seq.

RESEARCH REFERENCES

Ark. L. Rev. You’ve Got Mail ... But Do You Have a Contract?: Does an E-Mail Satisfy the Arkansas Statute of Frauds?, 60 Ark. L. Rev. 707.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CASE NOTES

Good Faith Purchasers for Value.

Trial court’s determination that the course of dealing in the used-car trade was that a seller would reimburse the buyer when the seller could not deliver clear title to the vehicle was supported by the evidence and public policy, and fell within the definitions of trade usage and good faith in § 4-1-303 and subdivision (b)(20) of this section. Therefore, a seller of a vehicle with an encumbered title was

required to reimburse the buyer even though the seller was itself a good faith purchaser. *Superior, Inc. v. Arrington*, 2009 Ark. App. 875, — S.W.3d — (2009).

Cited: *Am. State Bank v. Union Planters Bank, N.A.*, 332 F.3d 533 (8th Cir. 2003); *Lee County v. Volvo Constr. Equip. N. Am., Inc.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 95745 (E.D. Ark. Nov. 20, 2008).

4-1-202. Notice — Knowledge.

(a) Subject to subsection (f), a person has “notice” of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

(d) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person “receives” a notice or notification when:

- (1) it comes to that person’s attention; or
- (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

History. Acts 2005, No. 856, § 11.

Publisher’s Notes. Former § 4-1-202, concerning prima facie evidence by third party documents, was repealed by Acts

2005, No. 856, § 10. The former section was derived from Acts 1961, No. 185, § 1-201 [1-202]; reen. 1967, No. 303, § 2 (1-202); A.S.A. 1947, § 85-1-202.

CASE NOTES

Lack of Notice.

Judgment was properly awarded to plaintiff in its action against defendant for payment of a cashier’s check that was obtained with insufficient funds because plaintiff was a holder in due course under § 4-3-302(a)(2) when it accepted the cash-

ier’s check for payment of a home loan, an antecedent claim, after the homeowners refinanced the home; at the time plaintiff took the cashier’s check, it did not have notice of the check’s insufficiency, as it was not brought to plaintiff’s attention until the day after the check was negotiated.

Southern Bank of Commerce v. Union
Planters Nat'l Bank, 375 Ark. 141, 289
S.W.3d 414 (2008).

4-1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The “remaining economic life of the goods” and “reasonably predictable” fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

History. Acts 2005, No. 856, § 12.

former section was derived from Acts

Publisher’s Notes. Former § 4-1-203, concerning obligation of good faith, was repealed by Acts 2005, No. 856, § 10. The

1961, No. 185, § 1-203; reen. 1967, No. 303, § 2 (1-203); A.S.A. 1947, § 85-1-203.

CASE NOTES

Sale.

Where the debtor-in-possession asserted it had an option to purchase three tractors that was directly contradicted by the express terms of the parties’ agreement, the debtor was required to accept or reject the lease under 11 U.S.C.S. § 365. A terminal rental adjustment clause did not

create a purchase option under § 4-2A-110. Even the presence of a combination of the factors listed in subsection (c) of this section does not conclusively prove that an agreement is a sale instead of a lease. In re Double G Trucking of the Arklatex, Inc., 432 B.R. 789 (Bankr. W.D. Ark. 2010).

4-1-204. Value.

Except as otherwise provided in chapters 3, 4, and 5, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

History. Acts 2005, No. 856, § 13.

section was derived from Acts 1961, No.

Publisher’s Notes. Former § 4-1-204, concerning value for rights, was repealed by Acts 2005, No. 856, § 10. The former

185, § 1-204; reen. 1967, No. 303, § 2 (1-204); A.S.A. 1947, § 85-1-204.

4-1-205. Reasonable time — Seasonableness.

(a) Whether a time for taking an action required by this subtitle is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

History. Acts 2005, No. 856, § 14.

Publisher's Notes. Former § 4-1-205, concerning reasonable or seasonable time, was repealed by Acts 2005, No. 856, § 10.

The former section was derived from Acts 1961, No. 185, § 1-205; 1967, No. 303, § 2 (1-205); A.S.A. 1947, § 85-1-205.

CASE NOTES

Course of Dealing.

In the dealer's action against the bank for breach of contract to provide financing, where a bank provided recourse financing to a car dealer for 20 years, during that time had executed contracts establishing the terms for such financing and, though not provided in the contract, had always provided a delinquency list to the dealer, evidence that the bank had regularly pro-

vided the delinquency lists was admissible to show the previous conduct between the parties because that course of conduct could be regarded as establishing a common base of understanding for interpreting their expressions and other conduct. *Bank of Am., N.A. v. C.D. Smith Motor Co.*, 353 Ark. 228, 106 S.W.3d 425 (2003) (decision under prior law).

4-1-206. Presumptions.

Whenever this subtitle creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

History. Acts 2005, No. 856, § 15.

Publisher's Notes. Former § 4-1-206, concerning presumptions, was repealed by Acts 2005, No. 856, § 10. The former

section was derived from Acts 1961, No. 185, § 1-206; reen. 1967, No. 303, § 2 (1-206); A.S.A. 1947, § 85-1-206; Acts 1995, No. 425, § 3.

4-1-207 — 4-1-209. [Repealed.]

Publisher's Notes. These sections, concerning performance or acceptance under reservation of rights, option to accelerate at will, and subordinated obligations, were repealed by Acts 2005, No. 856, § 10. The sections were derived from:

4-1-207. Acts 1961, No. 185, § 1-207; reen. 1967, No. 303, § 2 (1-207); A.S.A. 1947, § 85-1-207; Acts 1991, No. 572, § 4.

4-1-208. Acts 1961, No. 185, § 1-208; reen. 1967, No. 303, § 2 (1-208); A.S.A. 1947, § 85-1-208.

4-1-209. Acts 1961, No. 185, § 1-209, as added by 1967, No. 303, § 2 (1-209); A.S.A. 1947, § 85-1-209.

PART 3 — SUBORDINATED OBLIGATIONS

SECTION.

4-1-301. Territorial application of the subtitle — Parties' power to choose applicable law.

4-1-302. Variation by agreement.

4-1-303. Course of performance — Course of dealing — Usage of trade.

4-1-304. Obligation of good faith.

4-1-305. Remedies to be liberally administered.

SECTION.

4-1-306. Waiver or renunciation of claim or right after breach.

4-1-307. Prima facie evidence by third-party documents.

4-1-308. Performance or acceptance under reservation of rights.

4-1-309. Option to accelerate at will.

4-1-310. Subordinated obligations.

4-1-301. Territorial application of the subtitle — Parties' power to choose applicable law.

(1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this subtitle applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 4-2-402.

Applicability of the chapter on leases. Sections 4-2A-105 and 4-2A-106.

Applicability of the chapter on bank deposits and collections. Section 4-4-102.

Governing law in the chapter on funds transfers. Section 4-4A-507.

Letters of Credit. Section 4-5-116.

Applicability of the chapter on Investment Securities. Section 4-8-110.

Law governing perfection, the effect of perfection or non-perfection, and the priority of security interests and agricultural liens. Sections 4-9-301 through 4-9-307.

History. Acts 2005, No. 856, § 16.

RESEARCH REFERENCES

Ark. L. Notes. Watkins, A Guide to Choice of Law in Arkansas, 2005 Arkansas L. Notes 151.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CASE NOTES

Choice of Law Provision Enforceable.

Although the communications corporations had home offices in Arkansas, they had a presence in and conducted business in each of the states in which putative class members resided, so both contracting parties were located in the respective state in which each transaction originated. By virtue of the choice-of-law provision in the agreement, the corporations and their customers agreed that their

agreement would be governed by the laws of the state of the customer's billing address; therefore, because there was a reasonable relationship between the transaction and the state of the customer's billing address, that choice-of-law provision was enforceable pursuant to subdivision (1) of this section. *Tyler v. Alltel Corp.*, — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 15550 (E.D. Ark. Feb. 23, 2010).

4-1-302. Variation by agreement.

(a) Except as otherwise provided in subsection (b) or elsewhere in this subtitle, the effect of provisions of this subtitle may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this subtitle may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this subtitle requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this subtitle of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

History. Acts 2005, No. 856, § 16.

4-1-303. Course of performance — Course of dealing — Usage of trade.

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of

dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to § 4-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

History. Acts 2005, No. 856, § 16.

CASE NOTES

ANALYSIS

Admissibility.
Usage of Trade.

Admissibility.

In a contract case involving written purchase orders, a trial court did not err in admitting evidence showing the parties' course or dealing or course of performance under § 4-2-202(a) because what the amount of a buyer's gross margin was subject to a separate oral agreement, negotiated on a yearly basis as to each line of clothing sold by the supplier. Moreover, merger clauses did not apply to modifications made after a merger agreement was signed. *L.F. Brands Mktg. v. Dillard's, Inc.*, 2009 Ark. App. 174, 314 S.W.3d 736

(2009), rehearing denied, *L.F. Brands Mktg. v. Dillards, Inc.*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 871 (Apr. 22, 2009).

Usage of Trade.

Trial court's determination that the course of dealing in the used-car trade was that a seller would reimburse the buyer when the seller could not deliver clear title to the vehicle was supported by the evidence and public policy, and fell within the definitions of trade usage and good faith in this section and § 4-1-201(b)(20). Therefore, a seller of a vehicle with an encumbered title was required to reimburse the buyer even though the seller was itself a good faith purchaser. *Superior, Inc. v. Arrington*, 2009 Ark. App. 875, — S.W.3d — (2009).

4-1-304. Obligation of good faith.

Every contract or duty within this subtitle imposes an obligation of good faith in its performance and enforcement.

History. Acts 2005, No. 856, § 16.

4-1-305. Remedies to be liberally administered.

(a) The remedies provided by this subtitle must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this subtitle or by other rule of law.

(b) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect.

History. Acts 2005, No. 856, § 16.

4-1-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

History. Acts 2005, No. 856, § 16.

4-1-307. Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History. Acts 2005, No. 856, § 16.

4-1-308. Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

History. Acts 2005, No. 856, § 16.

4-1-309. Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

History. Acts 2005, No. 856, § 16.

4-1-310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

History. Acts 2005, No. 856, § 16.

CHAPTER 2

SALES

PART.

1. SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER.
2. FORM, FORMATION, AND READJUSTMENT OF CONTRACT.
3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT.
4. TITLE, CREDITORS, AND GOOD FAITH PURCHASERS.
5. PERFORMANCE.
6. BREACH, REPUDIATION, AND EXCUSE.
7. REMEDIES.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Some Practical Advice About Taking Security Interests in Gemstones, Accompanied by a Theoretical Discussion of the Negotiability of Goods, New and Used, 2004 Arkansas L. Notes 75.

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

PART 1 — SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

SECTION.

- 4-2-103. Definitions and index of definitions.
- 4-2-104. Definitions — “Merchant” —

“Between merchants” —
“Financing agency”.

4-2-101. Short title.

RESEARCH REFERENCES

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

4-2-102. Scope — Certain security and other transactions excluded from chapter.

CASE NOTES

Lease Agreement.

Assuming that the provisions of the Uniform Commercial Code applied to the lease of a skid-steer loader used for landscaping, an exculpatory clause contained in the lease agreement stating that the

leasing company was not responsible for injuries sustained in the use of the loader was not unconscionable. *Jordan v. Diamond Equip. & Supply Co.*, 362 Ark. 142, 207 S.W.3d 525 (2005).

4-2-103. Definitions and index of definitions.

- (1) In this chapter unless the context otherwise requires:
 - (a) “Buyer” means a person who buys or contracts to buy goods.
 - (b) [Reserved.]
 - (c) “Receipt” of goods means taking physical possession of them.
 - (d) “Seller” means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:
 - “Acceptance”. Section 4-2-606.
 - “Banker’s credit”. Section 4-2-325.
 - “Between merchants”. Section 4-2-104.
 - “Cancellation”. Section 4-2-106(4).
 - “Commercial unit”. Section 4-2-105.
 - “Confirmed credit”. Section 4-2-325.
 - “Conforming to contract”. Section 4-2-106.
 - “Contract for sale”. Section 4-2-106.
 - “Cover”. Section 4-2-712.
 - “Entrusting”. Section 4-2-403.
 - “Financing agency”. Section 4-2-104.
 - “Future goods”. Section 4-2-105.
 - “Goods”. Section 4-2-105.
 - “Identification”. Section 4-2-501.
 - “Installment contract”. Section 4-2-612.
 - “Letter of credit”. Section 4-2-325.
 - “Lot”. Section 4-2-105.
 - “Merchant”. Section 4-2-104.
 - “Overseas”. Section 4-2-323.
 - “Person in position of seller”. Section 4-2-707.
 - “Present sale”. Section 4-2-106.
 - “Sale”. Section 4-2-106.
 - “Sale on approval”. Section 4-2-326.
 - “Sale or return”. Section 4-2-326.
 - “Termination”. Section 4-2-106.
- (3) “Control” as provided in § 4-7-106 and the following definitions in other chapters apply to this chapter:
 - “Check”. Section 4-3-104.
 - “Consignee”. Section 4-7-102.

“Consignor”. Section 4-7-102.

“Consumer goods”. Section 4-9-102.

“Dishonor”. Section 4-3-502.

“Draft”. Section 4-3-104.

(4) In addition, chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 1961, No. 185, § 2-103; A.S.A. 1947, § 85-2-103; 2001, No. 1439, § 4; 2005, No. 856, § 17; 2007, No. 342, § 8.

Amendments. The 2007 amendment substituted “‘Control’ as provided in § 4-7-106 and the” for “The” in (3).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-2-104. Definitions — “Merchant” — “Between merchants” — “Financing agency”.

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (§ 4-2-707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History. Acts 1961, No. 185, § 2-104; A.S.A. 1947, § 85-2-104; Acts 2007, No. 342, § 9.

Amendments. The 2007 amendment inserted “or are associated with” in (2).

4-2-105. Definitions — Transferability — “Goods” — “Future” goods — “Lot” — “Commercial unit”.

RESEARCH REFERENCES

ALR. What Constitutes “Future Goods” Within Scope of U.C.C. Article 2. 48 A.L.R.6th 475.

4-2-106. Definitions — “Contract” — “Agreement” — “Contract for sale” — “Sale” — “Present sale” — “Conforming” to contract — “Termination” — “Cancellation”.

CASE NOTES

Sale.

Country club was not liable under § 16-126-104 to accident victims injured by a driver who had consumed alcohol at the country club’s charitable fundraiser because there was no “sale” of alcohol to the driver by the country club; rather, the country club donated two bottles of wine for every table of 10 persons at the fund-

raiser. Under subdivision (1) of this section, a sale consisted in the passing of title from the seller to the buyer for a price. *Garcia v. Chenal Country Club*, 2010 Ark. App. 180, — S.W.3d — (2010), review denied, *Mason v. Chenal Country Club*, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 396 (Aug. 6, 2010).

4-2-107. Goods to be severed from realty — Recording.

CASE NOTES

Statute of Frauds.

Oral contract between the company and the contractor for excavation work was for the sale of services, not goods or an interest in land, and therefore was not subject to the statute of frauds, § 4-2-107(1); the

company promised to pay the contractor to remove the dirt; thus, the contractor was the seller, the company the buyer, and services, not dirt, were sold. *Hodges v. John F. Jenkins Contr., Inc.*, 98 Ark. App. 125, 252 S.W.3d 152 (2007).

PART 2 — FORM, FORMATION, AND READJUSTMENT OF CONTRACT

SECTION.

4-2-202. Final written expression — Parol or extrinsic evidence.

SECTION.

4-2-208. [Repealed.]

4-2-201. Formal requirements — Statute of frauds.

RESEARCH REFERENCES

ALR. Satisfaction of Statute of Frauds by E-mail. 110 A.L.R.5th 277.

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

You’ve Got Mail ... But Do You Have a Contract?: Does an E-Mail Satisfy the Arkansas Statute of Frauds?, 60 Ark. L. Rev. 707.

CASE NOTES

ANALYSIS

Applicability.
Electronic Mail.

Applicability.

The Arkansas Uniform Commercial Code contemplates that parties may enter into oral agreements that are subsequently confirmed in writing; hence, where a manufacturer had historically paid for materials supplied pursuant to purchase orders with a supplier, despite the supplier's failure to comply with the orders' term requiring written confirmation, it was reasonable to consider the purchase orders confirmed oral contracts. *Bio-Tech Pharmacal, Inc. v. Int'l Bus. Connections, LLC*, 86 Ark. App. 220, 184 S.W.3d 447 (2004).

Summary judgment was improperly

granted in favor of company where buyer's report evinced a prior oral agreement between the buyer and the company; the report satisfied the merchants' exception as a writing in confirmation of the contract, which removed the alleged contract from the Statute of Frauds. *Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc.*, 365 Ark. 573, 231 S.W.3d 720 (2006).

Electronic Mail.

Language in buyer's e-mail did not constitute a sufficient writing for purposes of the statute of frauds because it did not evince an agreement between retailer/buyer and importer/seller on price mark-downs. *General Trading Int'l, Inc. v. Wal-Mart Stores, Inc.*, 320 F.3d 831 (8th Cir. 2003).

4-2-202. Final written expression — Parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing, or usage of trade (§ 4-1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History. Acts 1961, No. 185, § 2-202; A.S.A. 1947, § 85-2-202; Acts 2005, No. 856, § 18.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CASE NOTES

Admissibility of Parol Evidence.

In dealer's action against bank for breach of contract to provide financing, where a bank had provided recourse financing to a car dealer for 20 years, during that time had executed contracts es-

tablishing the terms for such financing and, though not provided in the contract, had always provided a delinquency list to the dealer, evidence that the bank had regularly provided the delinquency lists was admissible to show the previous con-

duct between the parties because it did not vary the terms of the written contract and despite the existence of a merger clause in the contract. *Bank of Am., N.A. v. C.D. Smith Motor Co.*, 353 Ark. 228, 106 S.W.3d 425 (2003).

In reviewing wholesaler's claim that the parties did not intend certain poultry shipments to be subject to a cost, insurance, and freight shipment contract, the appellate court refused to consider prior shipment invoices showing the shipping terms as "free alongside" as they were offered to contradict the terms of the invoices at issue and, thus, the evidence was barred by the parol evidence rule. *P & O Nedlloyd, Ltd. v. Sanderson Farms, Inc.*, 462 F.3d 1015 (8th Cir. 2006), rehearing

denied, — F.3d —, 2006 U.S. App. LEXIS 25412 (8th Cir. Oct. 11, 2006).

In a contract case involving written purchase orders, a trial court did not err in admitting evidence showing the parties' course or dealing or course of performance under subsection (a) of this section because what the amount of a buyer's gross margin was subject to a separate oral agreement, negotiated on a yearly basis as to each line of clothing sold by the supplier. Moreover, merger clauses did not apply to modifications made after a merger agreement was signed. *L.F. Brands Mktg. v. Dillard's, Inc.*, 2009 Ark. App. 174, 314 S.W.3d 736 (2009), rehearing denied, *L.F. Brands Mktg. v. Dillards, Inc.*, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 871 (Apr. 22, 2009).

4-2-206. Offer and acceptance in formation of contract.

CASE NOTES

Acceptance of Offer.

The Arkansas Uniform Commercial Code contemplates that parties may enter into oral agreements that are subsequently confirmed in writing; hence, where a manufacturer had historically paid for materials supplied pursuant to purchase orders with a supplier, despite

the supplier's failure to comply with the orders' term requiring written confirmation, it was reasonable to consider the purchase orders confirmed oral contracts. *Bio-Tech Pharmacal, Inc. v. Int'l Bus. Connections, LLC*, 86 Ark. App. 220, 184 S.W.3d 447 (2004).

4-2-208. [Repealed.]

Publisher's Notes. This section, concerning course of performance or practical construction, was repealed by Acts 2005,

No. 856, § 19. The section was derived from Acts 1961, No. 185, § 2-208; A.S.A. 1947, § 85-2-208.

4-2-209. Modification, rescission, and waiver.

CASE NOTES

Waiver Not Retracted.

Judgment was properly entered for a supplier in an action to recover for goods sold where (1) historically, the supplier phoned the manufacturer regarding the availability of materials desired by the manufacturer, (2) the manufacturer paid for materials supplied pursuant to purchase orders sent to the supplier, despite

the supplier's failure to comply with the orders' term requiring written confirmation, and (3) there was no evidence that the manufacturer ever retracted its waiver of the written confirmation term on the purchase order pursuant to subdivision (5) of this section. *Bio-Tech Pharmacal, Inc. v. Int'l Bus. Connections, LLC*, 86 Ark. App. 220, 184 S.W.3d 447 (2004).

PART 3 — GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

SECTION.

4-2-310. Open time for payment or running of credit — Authority to ship under reservation.

SECTION.

4-2-323. Form of bill of lading required in overseas shipment — “Overseas”.

4-2-302. Unconscionable contract or clause.

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

CASE NOTES

ANALYSIS

Contract Not Unconscionable.
Contract Unconscionable.

Contract Not Unconscionable.

Assuming that the provisions of the Uniform Consumer Code applied to the lease of a skid-steer loader used for landscaping, an exculpatory clause contained in the lease agreement stating that the leasing company was not responsible for injuries sustained in the use of the loader was not unconscionable. *Jordan v. Diamond Equip. & Supply Co.*, 362 Ark. 142, 207 S.W.3d 525 (2005).

Contract Unconscionable.

Where debtor assigned his military pension payments to creditor in exchange for

a lump sum payment, but later denied creditor access to those payments, the court declined to grant creditor summary judgment on its suit to declare the debt nondischargeable under 11 U.S.C.S. § 523(a)(4) and (6) because (1) the sale of military pension rights violated 37 U.S.C.S. § 701; (2) the contract did not bar debtor from raising the issue of illegality as a defense to a complaint to determine dischargeability; and (3) the contract was subject to the defense of unconscionability because it stripped debtor of all remedies against creditor. *Structured Invs. Co., LLC v. Price (In re Price)*, — B.R. —, 2003 Bankr. LEXIS 2042 (Bankr. E.D. Ark. Apr. 9, 2003).

4-2-306. Output, requirements, and exclusive dealings.

RESEARCH REFERENCES

ALR. Establishment and construction of requirements contracts under § 2-306(1) of Uniform Commercial Code. 94 A.L.R.5th 247.

4-2-310. Open time for payment or running of credit — Authority to ship under reservation.

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless

such inspection is inconsistent with the terms of the contract (§ 4-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History. Acts 1961, No. 185, § 2-310; A.S.A. 1947, § 85-2-310; Acts 2007, No. 342, § 10. **Amendments.** The 2007 amendment rewrote (c).

4-2-314. Implied warranty — Merchantability — Usage of trade.

CASE NOTES

Applicability.

Seller of a heat induction coil that triggered a fire in the buyer's furnace was not entitled to summary judgment with respect to the buyer's suit for breach of contract, negligence, and breach of warranties because, given that the buyer did not accept the seller's offer and terms, the gap-filling provisions of the Uniform Commercial Code (UCC) provided for the im-

plied warranty of merchantability and the implied warranty of fitness for a particular purpose under this section and § 4-2-315. In addition, the UCC allowed for recovery of incidental and consequential damages under this section and § 4-2-715. *Coorstek, Inc. v. Elec. Melting Servs. Co.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 6092 (E.D. Ark. Jan. 15, 2008).

4-2-315. Implied warranty — Fitness for particular purpose.

CASE NOTES

Applicability.

Seller of a heat induction coil that triggered a fire in the buyer's furnace was not entitled to summary judgment with respect to the buyer's suit for breach of contract, negligence, and breach of warranties because, given that the buyer did not accept the seller's offer and terms, the gap-filling provisions of the Uniform Commercial Code (UCC) provided for the im-

plied warranty of merchantability and the implied warranty of fitness for a particular purpose under § 4-2-314 and this section. In addition, the UCC allowed for recovery of incidental and consequential damages under § 4-2-714 and this section. *Coorstek, Inc. v. Elec. Melting Servs. Co.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 6092 (E.D. Ark. Jan. 15, 2008).

4-2-316. Exclusion or modification of warranties.

CASE NOTES

Exclusions.

In an action by the buyer of a used Hydro-Ax machine against the seller and two manufacturers, the trial court did not err in granting summary judgment against buyer on his claim of breach of implied warranties; the fact that there was no written exclusion of the implied warranty of fitness did not provide the buyer with relief because subdivision (3) of this section negated the necessity of a

writing in an "as is" sale and any implied warranties were excluded because, prior to the sale, buyer was allowed to inspect and use the machine for two days. *Pilcher v. Suttle Equip. Co.*, 365 Ark. 1, 223 S.W.3d 789 (2006).

Cited: (decision under prior law) *Lee County v. Volvo Constr. Equip. N. Am., Inc.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 95745 (E.D. Ark. Nov. 20, 2008).

4-2-317. Cumulation and conflict of warranties express or implied.

CASE NOTES

Applicability.

This section was inapplicable to a contract involving the replacement of roofing

material, although legal principles applied. *Graham Constr. Co. v. Earl*, 362 Ark. 220, 208 S.W.3d 106 (2005).

4-2-323. Form of bill of lading required in overseas shipment — "Overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (§ 4-2-508(1)); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

History. Acts 1961, No. 185, § 2-323; A.S.A. 1947, § 85-2-323; Acts 2007, No. 342, § 11.

A.C.R.C. Notes. The amendment of § 4-2-323 by Acts 2007, No. 342, § 11 omitted subsection (3) in its entirety. As

subsection (3) was omitted from § 4-2-323 without being stricken through in the act, it appeared that the omission of subsection (3) was inadvertent on the part of the General Assembly, and so subsection (3)

remains in § 4-2-323.

Amendments. The 2007 amendment inserted “tangible” in the introductory paragraph of (2).

4-2-326. Sale on approval and sale or return — Rights of creditors.

RESEARCH REFERENCES

ALR. “Sale on Approval” and “Sale or Return” Contracts under Uniform Commercial Code § 2-326. 44 A.L.R.6th 441.

PART 4 — TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

SECTION.

4-2-401. Passing of title — Reservation

for security — Limited application of section.

4-2-401. Passing of title — Reservation for security — Limited application of section.

Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (§ 4-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on secured transactions (chapter 9 of this title), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a “sale”.

History. Acts 1961, No. 185, § 2-401; A.S.A. 1947, § 85-2-401; Acts 2007, No. 342, § 12.

Amendments. The 2007 amendment, in (3)(a), inserted “tangible” and “and if

the seller is to deliver an electronic document of title, title passes when the seller delivers the document”; and inserted “of title” in (3)(b).

RESEARCH REFERENCES

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

CASE NOTES

Execution of Contract.

In a Chapter 7 bankruptcy case, creditor did not convert the proceeds from the sale of two vacuum units when it credited the proceeds to an outstanding account, rather than forwarding the payment to debtor, and debtor should have pursued the case as a breach of contract because a sale was effectuated when an agreement was made since the units had already

been delivered; creditor was entitled to exercise setoff under the circumstances, but was still liable for an amount that had not been credited or paid to debtor. *Natl Hydro-Vac Indus. Servs., L.L.C. v. Fed. Signal Corp.* (In re *Nat'l Hydro-Vac Indus. Servs., L.L.C.*), 314 B.R. 753 (Bankr. E.D. Ark. 2004).

Cited: *Garcia v. Chenal Country Club*, 2010 Ark. App. 180, — S.W.3d — (2010).

PART 5 — PERFORMANCE

SECTION.

4-2-503. Manner of seller's tender of delivery.

4-2-505. Seller's shipment under reservation.

SECTION.

4-2-506. Rights of financing agency.

4-2-509. Risk of loss in the absence of breach.

4-2-501. Insurable interest in goods — Manner of identification of goods.

RESEARCH REFERENCES

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

4-2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within § 4-2-504 respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in § 4-9-101 et seq. receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (§ 4-2-323(2)); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

History. Acts 1961, No. 185, § 2-503; A.S.A. 1947, § 85-2-503; Acts 2007, No. 342, § 13.

Amendments. The 2007 amendment, in (4)(b), substituted “record directing” for

“written direction to” and inserted “except as otherwise provided in § 4-9-101 et seq.”; and inserted “or associated with” in (5)(b).

4-2-505. Seller’s shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller’s expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (§ 4-2-507(2)) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document of title.

History. Acts 1961, No. 185, § 2-505; A.S.A. 1947, § 85-2-505; Acts 2007, No. 342, § 14.

Amendments. The 2007 amendment inserted “or control” in (1)(b); and added “of title” in (2).

4-2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper’s right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

History. Acts 1961, No. 185, § 2-506; A.S.A. 1947, § 85-2-506; Acts 2007, No. 342, § 15.

Amendments. The 2007 amendment deleted “on its face” following “regular” in (2).

4-2-509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (§ 4-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a nonnegotiable document of title or other directions to deliver in a record, as provided in § 4-2-503(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (§ 4-2-327) and on effect of breach on risk of loss (§ 4-2-510).

History. Acts 1961, No. 185, § 2-509; A.S.A. 1947, § 85-2-509; Acts 2007, No. 342, § 16.

inserted "possession or control of" in (2)(a) and (2)(c); and, in (2)(c), deleted "written" following "other" and inserted "in a record."

Amendments. The 2007 amendment

PART 6 — BREACH, REPUDIATION, AND EXCUSE**SECTION.**

4-2-605. Waiver of buyer's objections by failure to particularize.

4-2-601. Buyer's rights on improper delivery.**RESEARCH REFERENCES**

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

4-2-605. Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

History. Acts 1961, No. 185, § 2-605; A.S.A. 1947, § 85-2-605; Acts 2007, No. 342, § 17.

Amendments. The 2007 amendment substituted "in" for "on the face of" in (2).

4-2-607. Effect of acceptance — Notice of breach — Burden of establishing breach after acceptance — Notice of claim or litigation to person answerable over.

CASE NOTES

Notice of Breach.

Crop duster failed to give reasonable notice of the breach, as required by this section, to the seller after accepting the wrong fuel for the crop duster's airplane. *Adams v. Wacaster Oil Co.*, 81 Ark. App. 150, 98 S.W.3d 832 (2003).

Trial court properly gave manufacturer a setoff on its counterclaim for breach of warranties as telephone calls from the

manufacturer to the corporation were considered sufficient notice of the breach; notice is sufficient where it informs the seller that the transaction is claimed to involve a breach and, thus, to open the way for negotiation of a normal settlement. *Indus. Elec. Supply, Inc. v. Lytle Mfg., L.L.C.*, 94 Ark. App. 81, 226 S.W.3d 1 (2006).

4-2-609. Right to adequate assurance of performance.

CASE NOTES

Cure.

Summary judgment was premature as a question of material fact remained as to when, or if, the supplier cured the "quality" problems; the plain and unambiguous language of the parties' contract did not establish an outward limit of three days

for the supplier to cure before the purchaser was released from the long-term supply agreement that was inextricably linked to a multi-million dollar plant purchase. *Mt. Pure, L.L.C. v. Affiliated Foods Southwest, Inc.*, 96 Ark. App. 346, 241 S.W.3d 774 (2006).

PART 7 — REMEDIES

SECTION.

4-2-705. Seller's stoppage of delivery in transit or otherwise.

4-2-701. Remedies for breach of collateral contracts not impaired.

RESEARCH REFERENCES

Ark. L. Rev. Evolving Sales Law: Highlights of the Shifting Landscape of Arkansas Purchasing Law, 57 Ark. L. Rev. 835.

4-2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (§ 4-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History. Acts 1961, No. 185, § 2-705; substituted "a warehouse" for "warehouseman" in (2)(c); and inserted "of possession or control" in (3)(c).
A.S.A. 1947, § 85-2-705; Acts 2007, No. 342, § 18.

Amendments. The 2007 amendment

4-2-706. Seller's resale including contract for resale.

RESEARCH REFERENCES

ALR. Resale of goods under UCC § 2-706. 101 A.L.R.5th 563.

4-2-709. Action for the price.**CASE NOTES****Accepted Goods.**

In a Chapter 7 bankruptcy case, creditor did not convert the proceeds from the sale of two vacuum units when it credited the proceeds to an outstanding account, rather than forwarding the payment to debtor, and debtor should have pursued the case as a breach of contract because a sale was effectuated when an agreement

was made since the units had already been delivered; creditor was entitled to exercise setoff under the circumstances, but was still liable for an amount that had not been credited or paid to debtor. *Natl Hydro-Vac Indus. Servs., L.L.C. v. Fed. Signal Corp.* (In re *Nat'l Hydro-Vac Indus. Servs., L.L.C.*), 314 B.R. 753 (Bankr. E.D. Ark. 2004).

4-2-714. Buyer's damages for breach in regard to accepted goods.**CASE NOTES**

Cited: *Indus. Elec. Supply, Inc. v. Lytle Mfg., L.L.C.*, 94 Ark. App. 81, 226 S.W.3d 1 (2006).

4-2-717. Deduction of damages from the price.**CASE NOTES****Proof of Damages.**

In a debt-defense context, supplier was not required to prove vendor-specific damages with mathematical accuracy to defeat the vendors' motions for summary judgment but rather it simply had to offer evidence that it was damaged by defects

in each of the vendor's products; accordingly, the circuit court erred in requiring the supplier to allocate an exact amount of damages to each vendor in the debt-offset context. *Mt. Pure, L.L.C. v. Affiliated Foods Southwest, Inc.*, 96 Ark. App. 346, 241 S.W.3d 774 (2006).

CHAPTER 2A**LEASES****PART.**

1. GENERAL PROVISIONS.
2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT.
5. DEFAULT.

PART 1 — GENERAL PROVISIONS**SECTION.**

- 4-2A-103. Definitions and index of definitions.

4-2A-103. Definitions and index of definitions.

(1) In this chapter unless the context otherwise requires:

(a) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) “Cancellation” occurs when either party puts an end to the lease contract for default by the other party.

(c) “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars (\$25,000).

(f) “Fault” means wrongful act, omission, breach, or default.

(g) “Finance lease” means a lease with respect to which

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the

lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 4-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in

violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions". Section 4-2A-310(1).

"Construction mortgage". Section 4-2A-309(1)(d).

"Encumbrance". Section 4-2A-309(1)(e).

"Fixtures". Section 4-2A-309(1)(a).

"Fixture filing". Section 4-2A-309(1)(b).

“Purchase money lease”. Section 4-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

“Account”. Section 4-9-102(a)(2).

“Between merchants”. Section 4-2-104(3).

“Buyer”. Section 4-2-103(1)(a).

“Chattel paper”. Section 4-9-102(a)(11).

“Consumer goods”. Section 4-9-102(a)(23).

“Document”. Section 4-9-102(a)(30).

“Entrusting”. Section 4-2-403(3).

“General intangible”. Section 4-9-102(a)(42).

“Instrument”. Section 4-9-102(a)(47).

“Merchant”. Section 4-2-104(1).

“Mortgage”. Section 4-9-102(a)(55).

“Pursuant to commitment”. Section 4-9-102(a)(68).

“Receipt”. Section 4-2-103(1)(c).

“Sale”. Section 4-2-106(1).

“Sale on approval”. Section 4-2-326.

“Sale or return”. Section 4-2-326.

“Seller”. Section 4-2-103(1)(d).

(4) In addition, chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 1993, No. 439, § 1; 2001, No. 1439, § 9; 2005, No. 856, § 20; 2007, No. 342, §§ 19, 20.

Amendments. The 2007 amendment

substituted “acquiring goods” for “receiving goods” in (1)(a) and (1)(o); and substituted “leases” for “leased” in (1)(o).

CASE NOTES

In General.

Assuming that the provisions of the Uniform Commercial Code applied to the lease of a skid-steer loader used for land-scaping, an exculpatory clause contained in the lease agreement stating that the leasing company was not responsible for injuries sustained in the use of the loader

was not unconscionable; the exculpatory clause was available for the lessee to read when he signed and initialed the agreement and there was no evidence of gross inequality of bargaining power. *Jordan v. Diamond Equip. & Supply Co.*, 362 Ark. 142, 207 S.W.3d 525 (2005).

4-2A-108. Unconscionability.

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

CASE NOTES

Exculpatory Clause.

Assuming that the provisions of the Uniform Commercial Code applied to the

lease of a skid-steer loader used for land-scaping, an exculpatory clause contained in the lease agreement stating that the

leasing company was not responsible for injuries sustained in the use of the loader was not unconscionable; the exculpatory clause was available for the lessee to read when he signed and initialed the agree-

ment and there was no evidence of gross inequality of bargaining power. *Jordan v. Diamond Equip. & Supply Co.*, 362 Ark. 142, 207 S.W.3d 525 (2005).

4-2A-110. Terminal rental adjustment clauses for vehicle leases — Not sales or security interests.

CASE NOTES

Purchase Option.

Where the debtor-in-possession asserted it had an option to purchase three tractors based on parol evidence that was directly contradicted by the express terms of the parties' agreement, the debtor was

required to accept or reject the lease under 11 U.S.C.S. § 365. A terminal rental adjustment clause did not create a purchase option under this section. In re *Double G Trucking of the Arklatex, Inc.*, 432 B.R. 789 (Bankr. W.D. Ark. 2010).

PART 2 — FORMATION AND CONSTRUCTION OF LEASE CONTRACT

SECTION.

4-2A-207. [Repealed.]

4-2A-207. [Repealed.]

Publisher's Notes. This section, concerning course of performance or practical construction, was repealed by Acts 2005,

No. 856, § 21. The section was derived from Acts 1993, No. 439, § 1.

PART 5 — DEFAULT

SECTION.

A. In General

4-2A-501. Default — Procedure.

B. Default by Lessor

4-2A-514. Waiver of lessee's objections.

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SECTION.

C. Default by Lessee

4-2A-526. Lessor's stoppage of delivery in transit or otherwise.

4-2A-527. Lessor's rights to dispose of goods.

4-2A-528. Lessor's damages for non-acceptance, failure to pay, repudiation, or other default.

A. In General

4-2A-501. Default — Procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in

this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in § 4-1-305(a) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

History. Acts 1993, No. 439, § 1; 2005, No. 856, § 22.

B. Default by Lessor

4-2A-514. Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (§ 4-2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

History. Acts 1993, No. 439, § 1; 2007, No. 342, § 21.

Amendments. The 2007 amendment substituted "in" for "on the face of" in (2).

4-2A-518. Cover — Substitute goods.

(1) After a default by a lessor under the lease contract of the type described in § 4-2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 4-2A-504) or otherwise determined pursuant to agreement of the parties (§§ 4-1-302 and 4-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease

agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and § 4-2A-519 governs.

History. Acts 1993, No. 439, § 1; 2005, No. 856, § 23.

4-2A-519. Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 4-2A-504) or otherwise determined pursuant to agreement of the parties (§§ 4-1-302 and 4-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under § 4-2A-518(2), or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (§ 4-2A-516(3)), the measure of damages for non-conforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together

with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

History. Acts 1993, No. 439, § 1; 2005, No. 856, § 24.

C. Default by Lessee

4-2A-526. Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

- (a) receipt of the goods by the lessee;
- (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History. Acts 1993, No. 439, § 1; 2007, substituted "a warehouse" for "warehouseman" in (2)(c).
No. 342, § 22.

Amendments. The 2007 amendment

4-2A-527. Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in § 4-2A-523(1) or § 4-2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (§ 4-2A-525 or § 4-2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 4-2A-504) or otherwise determined pursuant to agreement of the parties (§§ 4-1-302 and 4-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a

commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under § 4-2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and § 4-2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one (1) or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (§ 4-2A-508(5)).

History. Acts 1993, No. 439, § 1; 2005, No. 856, § 25.

4-2A-528. Lessor's damages for non-acceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 4-2A-504) or otherwise determined pursuant to agreement of the parties (§§ 4-1-302 and 4-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under § 4-2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in § 4-2A-523(1) or § 4-2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place computed for the same lease term, and (iii) any incidental damages allowed under § 4-2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under § 4-2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

History. Acts 1993, No. 439, § 1; 2005, No. 856, § 26.

CHAPTER 3

NEGOTIABLE INSTRUMENTS

PART.

1. GENERAL PROVISIONS AND DEFINITIONS.
3. ENFORCEMENT OF INSTRUMENTS.
4. LIABILITY OF PARTIES.
6. DISCHARGE AND PAYMENT.

PART 1 — GENERAL PROVISIONS AND DEFINITIONS

SECTION.

- 4-3-103. Definitions.
4-3-106. Unconditional promise or order.
4-3-116. Joint and several liability —
Contribution.

SECTION.

- 4-3-119. Notice of right to defend action.

4-3-103. Definitions.

- (a) In this chapter:
- (1) “Acceptor” means a drawee who has accepted a draft.
 - (2) “Consumer transaction” means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.
 - (3) “Drawee” means a person ordered in a draft to make payment.
 - (4) “Drawer” means a person who signs or is identified in a draft as a person ordering payment.
 - (5) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
 - (6) “Maker” means a person who signs or is identified in a note as a person undertaking to pay.
 - (7) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one (1) or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(8) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(9) "Party" means a party to an instrument.

(10) "Principal obligor," with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this chapter.

(11) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(12) "Prove" with respect to a fact means to meet the burden of establishing the fact (§ 4-1-201(b)(8)).

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(15) "Remotely-created item" means an item drawn on an account, which is not created by the payor bank and does not bear a handwritten or facsimile signature purporting to be the signature of the drawer.

(16) "Secondary obligor," with respect to an instrument, means (a) an indorser or an accommodation party, (b) a drawer having the obligation described in § 4-3-414(d), or (c) any other party to the instrument that has recourse against another party to the instrument pursuant to § 4-3-116(b).

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". Section 4-3-409.

"Accommodated party". Section 4-3-419.

"Accommodation party". Section 4-3-419.

"Account". Section 4-4-104.

"Alteration". Section 4-3-407.

"Anomalous indorsement". Section 4-3-205.

"Blank indorsement". Section 4-3-205.

"Cashier's check". Section 4-3-104.

"Certificate of deposit". Section 4-3-104.

"Certified check". Section 4-3-409.

"Check". Section 4-3-104.

"Consideration". Section 4-3-303.

“Draft”. Section 4-3-104.
“Holder in due course”. Section 4-3-302.
“Incomplete instrument”. Section 4-3-115.
“Indorsement”. Section 4-3-204.
“Indorser”. Section 4-3-204.
“Instrument”. Section 4-3-104.
“Issue”. Section 4-3-105.
“Issuer”. Section 4-3-105.
“Negotiable instrument”. Section 4-3-104.
“Negotiation”. Section 4-3-201.
“Note”. Section 4-3-104.
“Payable at a definite time”. Section 4-3-108.
“Payable on demand”. Section 4-3-108.
“Payable to bearer”. Section 4-3-109.
“Payable to order”. Section 4-3-109.
“Payment”. Section 4-3-602.
“Person entitled to enforce”. Section 4-3-301.
“Presentment”. Section 4-3-501.
“Reacquisition”. Section 4-3-207.
“Special indorsement”. Section 4-3-205.
“Teller’s check”. Section 4-3-104.
“Transfer of instrument”. Section 4-3-203.
“Traveler’s check”. Section 4-3-104.
“Value”. Section 4-3-303.

(c) The following definitions in other chapters of this subtitle apply to this chapter:

“Bank”. Section 4-4-105.
“Banking day”. Section 4-4-104.
“Clearinghouse”. Section 4-4-104.
“Collecting bank”. Section 4-4-105.
“Depository bank”. Section 4-4-105.
“Documentary draft”. Section 4-4-104.
“Intermediary bank”. Section 4-4-105.
“Item”. Section 4-4-104.
“Payor bank”. Section 4-4-105.
“Suspends payments”. Section 4-4-104.

(d) In addition, chapter 1 of this subtitle contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 27.

CASE NOTES

Cited: *Mercantile Bank v. Vowell*, 82 Ark. App. 421, 117 S.W.3d 603 (2003).

4-3-104. Negotiable instrument.**CASE NOTES****Signature.**

Instrument executed by a company accountant constituted a check under subdivision (f)(i) of this section, and not a promissory note, because the owner of a company was the one who asked two creditors to delay presentment of the

document for payment; therefore, summary judgment was properly granted in favor of the accountant, who was not personally liable for payment. *Billingsley v. Smith*, 85 Ark. App. 128, 147 S.W.3d 697 (2004).

4-3-106. Unconditional promise or order.

(a) Except as provided in this section, for the purposes of § 4-3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another record, or (iii) that rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of § 4-3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of § 4-3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 28.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-3-110. Identification of person to whom instrument is payable.**CASE NOTES**

Cited: Am. State Bank v. Union Planters Bank, N.A., 332 F.3d 533 (8th Cir. 2003).

4-3-116. Joint and several liability — Contribution.

(a) Except as otherwise provided in the instrument, two (2) or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in § 4-3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) [Repealed.]

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 29.

4-3-118. Statute of limitations.**CASE NOTES****Applicability.**

Finding against the relatives in an action stemming from the relatives' default on a promissory note and security agreement previously executed was proper because the appellate court agreed with the circuit court's interpretation of the provision in the agreement to mean that the final payment, due on January 30, 2004, was to be a balloon payment of any unpaid balance on the note. Accordingly, the term

"principal balance" was to include everything that remained unpaid on the date the last balloon payment came due; therefore, the damage claim included everything that remained unpaid throughout the course of the note and the circuit court's finding that the claim was not barred by the statute of limitations was proper. *Housley v. Hensley*, 100 Ark. App. 118, 265 S.W.3d 136 (2007).

4-3-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or chapter 4, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 30.

PART 3 — ENFORCEMENT OF INSTRUMENTS

SECTION.

4-3-305. Defenses and claims in recoupment.

4-3-309. Enforcement of lost, destroyed, or stolen instrument.

SECTION.

4-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

4-3-302. Holder in due course.

CASE NOTES

ANALYSIS

Notice of Defenses.

Payees.

Notice of Defenses.

Manner the holder came into possession of the bonds was so peculiar and out of the ordinary course of business as to put the holder on notice that he was not a holder in due course of the bonds under subsection (c) of this section, and the holder took possession of the bonds subject to any defenses that may have been raised. The holder could not have acquired any greater rights than what his predecessor-in-interest had, so any claims related to

actions were waived before the holder acquired the bonds. *Wilkins v. U.S. Bank, N.A.*, 514 F. Supp. 2d 1120 (W.D. Ark. 2007).

Payees.

Judgment was properly awarded to plaintiff in its action against defendant for payment of a cashier's check that was obtained with insufficient funds because plaintiff was a holder in due course under subdivision (a)(2) of this section when it accepted the cashier's check for payment of a home loan, an antecedent claim, after the homeowners refinanced the home. *Southern Bank of Commerce v. Union Planters Nat'l Bank*, 375 Ark. 141, 289 S.W.3d 414 (2008).

4-3-305. Defenses and claims in recoupment.

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subdivision (a)(1), but is not subject to defenses of the obligor stated in subdivision (a)(2) or claims in recoupment stated in subdivision (a)(3) against a person other than the holder.

(c) Except as stated in subdivision (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (§ 4-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this chapter requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement;

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) the extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this chapter that establishes a different rule for consumer transactions.

History. Acts 1991, No. 572, § 5; 2005, No. 856, §§ 31, 32.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-3-309. Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1)(A) the person was entitled to enforce the instrument when loss of possession occurred, or

(B) the person has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, § 4-3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 33.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CASE NOTES**Tax Liens.**

This section did not bar the enforcement of federal tax lien by the foreclosure on a note and mortgage where the United States presented convincing evidence as

to the terms of the note and the fact that the debtor was the holder of the note when it was lost or destroyed. *United States v. Jepsen*, 268 F.3d 582 (8th Cir. 2001).

4-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made in a record under penalty of perjury, to the effect that (i) the declarer lost posses-

sion of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to § 4-4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subdivision (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may

assert rights with respect to the check either under this section or § 4-3-309.

History. Acts 2005, No. 856, § 34.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Business Law, 28 U. Ark. Little Legislation, 2005 Arkansas General As- Rock L. Rev. 321.

PART 4 — LIABILITY OF PARTIES

SECTION.	SECTION.
4-3-416. Transfer warranties.	4-3-419. Instruments signed for accom-
4-3-417. Presentment warranties.	modation.

4-3-402. Signature by representative.

CASE NOTES

ANALYSIS

Liability.
Personal Liability.

Liability.

Company was liable as an endorser where it gave a bondsman actual authority to endorse its name on a check; it was irrelevant that the bondsman later misappropriated the funds. *Holt Bonding Co. v. First Fed. Bank*, 82 Ark. App. 8, 110 S.W.3d 298 (2003).

Personal Liability.

Instrument executed by a company accountant constituted a check under § 4-3-

104(f)(i), and not a promissory note, because the owner of a company was the one who asked two creditors to delay presentment of the document for payment; therefore, summary judgment was properly granted in favor of the accountant, who was not personally liable for payment. *Billingsley v. Smith*, 85 Ark. App. 128, 147 S.W.3d 697 (2004).

Cited: *Am. State Bank v. Union Planters Bank, N.A.*, 332 F.3d 533 (8th Cir. 2003).

4-3-406. Negligence contributing to forged signature or alteration of instrument.

CASE NOTES

Ordinary Care.

Bank customer attempted to take proper precautions to safeguard the checkbooks, ATM cards, and PIN from his daughter; thus, trial court did not err in concluding that the customer was not precluded from asserting the forgeries and

unauthorized transactions against the bank pursuant to this section because the preclusion would only apply if the customer failed to exercise ordinary care that substantially contributed to the loss. *Mercantile Bank v. Vowell*, 82 Ark. App. 421, 117 S.W.3d 603 (2003).

4-3-415. Obligation of indorser.**CASE NOTES****Liability.**

Company was liable as an endorser where it gave a bondsman actual authority to endorse its name on a check; it was

irrelevant that the bondsman later misappropriated the funds. *Holt Bonding Co. v. First Fed. Bank*, 82 Ark. App. 8, 110 S.W.3d 298 (2003).

4-3-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
- (6) with respect to a remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(e) If the warranty in subdivision (a)(6) of this section is not given by a transferor under applicable conflict of laws rules, then the warranty in subdivision (a)(6) of this section is not given to that transferor when that transferor is a transferee.

History. Acts 1991, No. 572, § 5; 2005, No. 856, §§ 35, 36.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of ssembly, Business Law, 28 U. Ark. Little
Legislation, 2005 Arkansas General As- Rock L. Rev. 321.

4-3-417. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) with respect to any remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under § 4-3-404 or § 4-3-405 or the drawer is precluded under § 4-3-406 or § 4-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument;

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 37.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Business Law, 28 U. Ark. Little Legislation, 2005 Arkansas General As- Rock L. Rev. 321.

4-3-419. Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in § 4-3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i)

execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

History. Acts 1991, No. 572, § 5; 2005, No. 856, §§ 38, 39.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CASE NOTES

Accommodation Party.

Summary judgment was granted to a bank pursuant to Ark. R. Civ. P. 56 in its action seeking recovery under a guaranty agreement by a physician where it was determined that the physician received a direct and substantial benefit when he was released from a payment obligation to

his medical practice purchaser and, accordingly, he was personally obligated rather than just being an accommodation party pursuant this section. *Cranfill v. Union Planters Bank, N.A.*, 86 Ark. App. 1, 158 S.W.3d 703 (2004).

Cited: *Stevens v. Heritage Bank*, 104 Ark. App. 56, 289 S.W.3d 147 (2008).

4-3-420. Conversion of instrument.

RESEARCH REFERENCES

ALR. Drawer's right of recovery against depository bank that accepts check with missing indorsement or in violation of restrictive covenant. 104 A.L.R.5th 459.

CASE NOTES

Damages.

Where a bank honored checks payable jointly to a partnership and its creditor upon the endorsement of only one of the partners, the bank's liability to the creditor under subsection (b) of this section was the creditor's actual loss as reduced by later payments from the partnership

rather than the full amount of the checks; evidence of the partnership's subsequent payments was legally sufficient to rebut the presumption that the bank's liability was the face value of the checks. *Am. State Bank v. Union Planters Bank, N.A.*, 332 F.3d 533 (8th Cir. 2003).

PART 6 — DISCHARGE AND PAYMENT

SECTION.

4-3-602. Payment.

4-3-604. Discharge by cancellation or renunciation.

SECTION.

4-3-605. Discharge of secondary obligors.

4-3-602. Payment.

(a) Subject to subsection (e), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to pay the note has received a notification under this subsection (b).

(c) Subject to subsection (e), to the extent of the payment, a payment under subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under § 4-3-306 by another person.

(d) Subject to subsection (e), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under subsections (a) through (d) if:

(1) a claim to the instrument under § 4-3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 40.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-3-603. Tender of payment.

CASE NOTES

Inconsistencies of Payments.

Finding against the relatives in an action stemming from the relatives' default on a promissory note and security agreement previously executed was proper, in part because, as to the alleged tender of the remainder of the payments, there was no testimony as to exactly what amounts

were tendered or when. Given the inconsistencies of the actual payments that were paid and received, which the relatives did not dispute, the appellate court did not assume that all of the full payments were actually tendered in a timely fashion. *Housley v. Hensley*, 100 Ark. App. 118, 265 S.W.3d 136 (2007).

4-3-604. Discharge by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

(c) In this section, “signed,” with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 41.

4-3-605. Discharge of secondary obligors.

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor’s recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this chapter.

(2) unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) if the secondary obligor is not discharged under paragraph (2), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor’s recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this chapter.

(2) the secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) to the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the

person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this chapter.

(2) the secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(3) to the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under chapter 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subdivision (a)(3) or subsections (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under § 4-3-419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by

general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

History. Acts 1991, No. 572, § 5; 2005, No. 856, § 42.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CHAPTER 4

BANK DEPOSITS AND COLLECTIONS

PART.

1. GENERAL PROVISIONS AND DEFINITIONS.
2. COLLECTION OF ITEMS — DEPOSITARY AND COLLECTING BANKS.
3. COLLECTION OF ITEMS — PAYOR BANKS.
4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

PART 1 — GENERAL PROVISIONS AND DEFINITIONS

SECTION.

4-4-104. Definitions and index of definitions.

SECTION.

4-4-105. Definitions of types of banks.

4-4-103. Variation by agreement — Measure of damages — Action constituting ordinary care.

CASE NOTES

ANALYSIS

Disclaimer of Transfer Warranties.
Notice of Encoding Error.

Disclaimer of Transfer Warranties.

Where a bank customer breached the transfer warranties under § 4-4-207 by depositing and receiving payment for a check with an altered payee line, an alleged agreement to disclaim transfer warranties would not have been valid because such a disclaimer was expressly prohibited with respect to checks by § 4-4-207(d). *Talbert v. United States Bank, N.A.*, 372 Ark. 148, 271 S.W.3d 486 (2008).

Notice of Encoding Error.

Where supplier's bank wrongly encoded a check but the supplier did not notice the error for seven months, the account agreement, which required the supplier to notify the supplier's bank of "any other errors" within 60 days, did not bar supplier's negligence suit because the agreement applied only to the types of transactions or errors specifically identified in § 4-4-406 (unauthorized signatures and alterations) and not to encoding errors. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

4-4-104. Definitions and index of definitions.

(a) In this chapter, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearinghouse" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (§ 4-8-102) or instructions for uncertificated securities (§ 4-8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in § 4-3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 4A of this subtitle or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Agreement for electronic presentment". Section 4-4-110.

[RESERVED]

"Collecting bank". Section 4-4-105.

"Depository bank". Section 4-4-105.

"Intermediary bank". Section 4-4-105.

"Payor bank". Section 4-4-105.

"Presenting bank". Section 4-4-105.

"Presentment notice". Section 4-4-110.

(c) "Control" as provided in § 4-7-106 and the following definitions in other chapters of this subtitle apply to this chapter:

"Acceptance". Section 4-3-409.

"Alteration". Section 4-3-407.

"Cashier's check". Section 4-3-104.

"Certificate of deposit". Section 4-3-104.

"Certified check". Section 4-3-409.

"Check". Section 4-3-104.

"Good faith". Section 4-3-103.

"Holder in due course". Section 4-3-302.

"Instrument". Section 4-3-104.

"Notice of dishonor". Section 4-3-503.

“Order”. Section 4-3-103.

“Ordinary care”. Section 4-3-103.

“Person entitled to enforce”. Section 4-3-301.

“Presentment”. Section 4-3-501.

“Promise”. Section 4-3-103.

“Prove”. Section 4-3-103.

“Record”. Section 4-3-103.

“Remotely-created item”. Section 4-3-103.

“Teller’s check”. Section 4-3-104.

“Unauthorized signature”. Section 4-3-403.

(d) In addition, chapter 1 of this subtitle contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 1961, No. 185, § 4-104; reen. 1967, No. 303, § 12 (4-104); A.S.A. 1947, § 85-4-104; Acts 1991, No. 572, § 6; 1995, No. 425, § 4; 2005, No. 856, § 43; 2007, No. 342, § 23.

Amendments. The 2007 amendment substituted “‘Control’ as provided in § 4-7-106 and the” for “The” in the introductory paragraph of (c).

CASE NOTES

Cited: GMAC v. Union Bank & Trust Co., 329 F.3d 594 (8th Cir. 2003).

4-4-105. Definitions of types of banks.

In this chapter:

(1) “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) “Depository bank” means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) “Payor bank” means a bank that is the drawee of a draft;

(4) “Intermediary bank” means a bank to which an item is transferred in course of collection except the depository or payor bank;

(5) “Collecting bank” means a bank handling an item for collection except the payor bank;

(6) “Presenting bank” means a bank presenting an item except a payor bank.

History. Acts 1961, No. 185, § 4-105; § 85-4-105; Acts 1991, No. 572, § 6; 2005, 1967, No. 303, § 12 (4-105); A.S.A. 1947, No. 856, § 44.

PART 2 — COLLECTION OF ITEMS — DEPOSITORY AND COLLECTING BANKS

SECTION.

4-4-207. Transfer warranties.

4-4-208. Presentment warranties.

SECTION.

4-4-210. Security interest of collecting bank in items, accompany-

SECTION.

ing documents, and proceeds.

4-4-212. Presentment by notice of item

not payable by, through, or at bank — Liability of drawer or indorser.

4-4-202. Responsibility for collection or return — When action timely.

CASE NOTES

ANALYSIS

Attorneys Fees.

Evidence.

Notice of Encoding Error.

Attorneys Fees.

Where supplier's bank wrongly encoded a check and supplier's claim against the supplier's bank was premised on its failure to use ordinary care in complying with the Uniform Commercial Code, attorney's fees were warranted because the amount of the claim was readily ascertainable. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

Evidence.

Where supplier's bank wrongly encoded a check but the supplier did not notice the error for seven months, although the supplier's bank argued that its procedures for encoding checks complied with the rel-

evant regulations, the issue of the supplier's bank's negligence was for a jury to decide; further, supplier's failure to reconcile its bank statement and the store owner's insolvency were not intervening acts. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

Notice of Encoding Error.

Where supplier's bank wrongly encoded a check but the supplier did not notice the error for seven months, the account agreement, which required the supplier to notify the supplier's bank of "any other errors" within 60 days, did not bar supplier's negligence suit because the agreement applied only to the types of transactions or errors specifically identified in § 4-4-406 (unauthorized signatures and alterations) and not to encoding errors. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

4-4-207. Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) the warrantor is a person entitled to enforce the item;
- (2) all signatures on the item are authentic and authorized;
- (3) the item has not been altered;
- (4) the item is not subject to a defense or claim in recoupment (§ 4-3-305(a)) of any party that can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) with respect to any remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete

item, according to its terms when completed as stated in §§ 4-3-115 and 4-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made “without recourse” or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty in paragraph (6) of subsection (a) of this section is not given by a transferor under applicable conflict of laws rules, then the warranty in paragraph (6) of subsection (a) of this section is not given to that transferor when that transferor is a transferee.

History. Acts 1961, No. 185, § 4-207; A.S.A. 1947, § 85-4-207; Acts 1991, No. 572, § 6; 2005, No. 856, §§ 45, 46.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CASE NOTES

Defenses.

Where a bank customer breached the transfer warranties by depositing and receiving payment for a check with an altered payee line, the alleged failure of the drawer of the check to promptly notify the

bank of the alteration did not provide a defense to the customer under the bank statement rule, § 4-4-406. *Talbert v. United States Bank, N.A.*, 372 Ark. 148, 271 S.W.3d 486 (2008).

4-4-208. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain

payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) with respect to any remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under § 4-3-404 or § 4-3-405 or the drawer is precluded under § 4-3-406 or § 4-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History. Acts 1961, No. 185, § 4-207;
A.S.A. 1947, § 85-4-207; Acts 1991, No.
572, § 6; 2005, No. 856, § 47.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-4-209. Encoding and retention warranties.

CASE NOTES

Evidence.

Where supplier's bank wrongly encoded a check but supplier did not notice the error for seven months, although the supplier's bank argued that its procedures for encoding checks complied with the relevant regulations, the issue of the supplier's

bank's negligence was for a jury to decide; further, supplier's failure to reconcile its bank statement and the store owner's insolvency were not intervening acts. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

4-4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to chapter 9, but:

(1) no security agreement is necessary to make the security interest enforceable (§ 4-9-203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

History. Acts 1961, No. 185, § 4-208; A.S.A. 1947, § 85-4-208; Acts 1991, No. 572, § 6; 2001, No. 1439, § 13; 2007, No. 342, § 24.

Amendments. The 2007 amendment inserted "possession or control of the" in the introductory paragraph of (c).

CASE NOTES

ANALYSIS

Attachment of Security Interest.
Proceeds.

Attachment of Security Interest.

Where an automobile dealership deposited checks which were immediately credited but subsequently dishonored, and the dealership's bank entered the amount of the dishonored checks in its own general ledger cash items account, the bank had no security interest in the proceeds of the dealership's sale of vehicles in which a finance company had a perfected security interest which were deposited in the bank's cash items account to cover the dishonored checks; by depositing the proceeds in its cash items account, rather than exchanging the dishonored checks with the dealership or the drawer for value, the bank engaged in a separate transaction with the dealership which did

not involve any interest of the bank in the dishonored checks. *GMAC v. Union Bank & Trust Co.*, 329 F.3d 594 (8th Cir. 2003), rehearing denied, — F.3d —, 2003 U.S. App. LEXIS 12812 (8th Cir. June 24, 2003).

Proceeds.

For purposes of subsection (c) of this section, "proceeds" include funds paid out by a presenting bank to the payee or funds directly received in exchange for the item; thus, when a depository bank advances funds on checks that are never converted to proceeds because payment is stopped, the checks, returned to the depository bank, have had no proceeds created to which a security interest can attach. *GMAC v. Union Bank & Trust Co.*, 329 F.3d 594 (8th Cir. 2003), rehearing denied, — F.3d —, 2003 U.S. App. LEXIS 12812 (8th Cir. June 24, 2003).

4-4-212. Presentment by notice of item not payable by, through, or at bank — Liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under § 4-3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under § 4-3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

History. Acts 1961, No. 185, § 4-210; A.S.A. 1947, § 85-4-210; Acts 1991, No. 572, § 6; 2005, No. 856, § 48.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General As-

sembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

PART 3 — COLLECTION OF ITEMS — PAYOR BANKS

SECTION.

4-4-301. Deferred posting — Recovery of payment by return of

items — Time of dishonor — Return of items by payor bank.

4-4-301. Deferred posting — Recovery of payment by return of items — Time of dishonor — Return of items by payor bank.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) returns the item;

(2) returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item; and the image is returned in accordance with that agreement; or

(3) sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) as to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

History. Acts 1961, No. 185, § 4-301; 301; Acts 1991, No. 572, § 6; 2005, No. 1967, No. 303, § 17; A.S.A. 1947, § 85-4- 856, § 49.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

PART 4 — RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

SECTION.

4-4-403. Customer's right to stop pay-

ment — Burden of proof of loss.

4-4-403. Customer's right to stop payment — Burden of proof of loss.

(a) A customer or any person authorized to draw on the account if there is more than one (1) person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in § 4-4-303. If the signature of more than one (1) person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six (6) months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under § 4-4-402.

History. Acts 1961, No. 185, § 4-403; A.S.A. 1947, § 85-4-403; Acts 1991, No. 572, § 6; 2005, No. 856, § 50.

RESEARCH REFERENCES

Ark. L. Rev. Note, Vanished in the Blink of an Eye: Split-Second Garnishment Liability and Loan Manager Accounts in the Wake of In re Southwestern Glass, 58 Ark. L. Rev. 893.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-4-406. Customer's duty to discover and report unauthorized signature or alteration — Comparative fault.

CASE NOTES

ANALYSIS

Customer's Breach of Transfer Warranties.

Lack of Ordinary Care.
Statements of Accounts.

Customer's Breach of Transfer Warranties.

Where a bank customer breached the transfer warranties under § 4-4-207 by depositing and receiving payment for a check with an altered payee line, the al-

leged failure of the drawer of the check to promptly notify the bank of the alteration did not provide a defense to the customer under the bank statement rule. *Talbert v. United States Bank, N.A.*, 372 Ark. 148, 271 S.W.3d 486 (2008).

Lack of Ordinary Care.

Trial court's findings contained no suggestion that the bank was negligent or otherwise failed to exercise ordinary care when it made payments to an unauthorized customer as the bank could not have

known that the transactions were a result of forgery or other unauthorized conduct. *Mercantile Bank v. Vowell*, 82 Ark. App. 421, 117 S.W.3d 603 (2003).

Statements of Accounts.

Terms of the customer-account agreement did not preclude the customer from recovering on the items contained in the July savings, August checking, and August savings statements because the bank was notified before 30 days had elapsed following the deemed-receipt dates of those statements; allowing recovery for the items that the bank paid for before August 10, 1997, but precluding recovery for those items that were paid after Au-

gust 10 was in keeping with the purpose of this section. *Mercantile Bank v. Vowell*, 82 Ark. App. 421, 117 S.W.3d 603 (2003).

Where supplier's bank wrongly encoded a check but the supplier did not notice the error for seven months, the account agreement, which required the supplier to notify the supplier's bank of "any other errors" within 60 days, did not bar supplier's negligence suit because the agreement applied only to the types of transactions or errors specifically identified in this section (unauthorized signatures and alterations) and not to encoding errors. *Douglas Cos. v. Commercial Nat'l Bank of Texarkana*, 419 F.3d 812 (8th Cir. 2005).

CHAPTER 4A

FUNDS TRANSFERS

PART.

1. SUBJECT MATTER AND DEFINITIONS.
2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

PART 1 — SUBJECT MATTER AND DEFINITIONS

SECTION.

4-4A-105. Other definitions.

4-4A-106. Time payment order is received.

4-4A-105. Other definitions.

(a) In this chapter:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) [Reserved.]

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (§ 4-1-201(b)(8)).

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". Section 4-4A-209.

"Beneficiary". Section 4-4A-103.

"Beneficiary's bank". Section 4-4A-103.

"Executed". Section 4-4A-301.

"Execution date". Section 4-4A-301.

"Funds transfer". Section 4-4A-104.

"Funds-transfer system rule". Section 4-4A-501.

"Intermediary bank". Section 4-4A-104.

"Originator". Section 4-4A-104.

"Originator's bank". Section 4-4A-104.

"Payment by beneficiary's bank to beneficiary". Section 4-4A-405.

"Payment by originator to beneficiary". Section 4-4A-406.

"Payment by sender to receiving bank". Section 4-4A-403.

"Payment date". Section 4-4A-401.

"Payment order". Section 4-4A-103.

"Receiving bank". Section 4-4A-103.

"Security procedure". Section 4-4A-201.

"Sender". Section 4-4A-103.

(c) The following definitions in chapter 4 apply to this chapter:

"Clearinghouse". Section 4-4-104.

"Item". Section 4-4-104.

"Suspends payments". Section 4-4-104.

(d) In addition chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 1991, No. 540, § 1; 2005, No. 856, § 51.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in § 4-1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or

amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

History. Acts 1991, No. 540, § 1; 2005, No. 856, § 52.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

4-4A-108. Exclusion of consumer transactions governed by federal law.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Electronic Fund Transfer Act (EFTA), and Regulations Promulgated Thereunder, 15 USCS §§ 1693 et seq. 46 A.L.R. Fed. 2d 473.

PART 2 — ISSUE AND ACCEPTANCE OF PAYMENT ORDER

SECTION. 4-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

4-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under § 4-4A-202, or (ii) not enforceable, in whole or in part, against the customer under § 4-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if

the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in § 4-1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

History. Acts 1991, No. 540, § 1; 2005, No. 856, § 53.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Business Law, 28 U. Ark. Little Rock L. Rev. 321.

CHAPTER 5

LETTERS OF CREDIT

SECTION.
4-5-103. Scope.

4-5-103. Scope.

(a) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(c) With the exception of this subsection, subsections (a) and (d) of this section, §§ 4-5-102(a)(9) and (10), 4-5-106(d), and 4-5-114(d), and except to the extent prohibited in §§ 4-1-302 and 4-5-117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

History. Acts 1997, No. 1070, § 1;
2005, No. 856, § 54.

CHAPTER 7

WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

PART.

1. GENERAL.
2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.
3. BILLS OF LADING: SPECIAL PROVISIONS.
4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.
5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.
6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS.
7. MISCELLANEOUS PROVISIONS.

Publisher's Notes. Former chapter 7, concerning warehouse receipts, bills of lading, and other documents of title, was repealed by Acts 2007, No. 342, § 1. The chapter was derived from the following sources:

4-7-101. Acts 1961, No. 185, § 7-101;
A.S.A. 1947, § 85-7-101.

4-7-102. Acts 1961, No. 185, § 7-102;
A.S.A. 1947, § 85-7-102.

4-7-103. Acts 1961, No. 185, § 7-103;
A.S.A. 1947, § 85-7-103.

4-7-104. Acts 1961, No. 185, § 7-104;
A.S.A. 1947, § 85-7-104.

4-7-105. Acts 1961, No. 185, § 7-105;
A.S.A. 1947, § 85-7-105.

4-7-201. Acts 1961, No. 185, § 7-201;
A.S.A. 1947, § 85-7-201.

4-7-202. Acts 1961, No. 185, § 7-202;
A.S.A. 1947, § 85-7-202.

4-7-203. Acts 1961, No. 185, § 7-203;
A.S.A. 1947, § 85-7-203.

4-7-204. Acts 1961, No. 185, § 7-204;
A.S.A. 1947, § 85-7-204.

4-7-205. Acts 1961, No. 185, § 7-205;
1981, No. 401, § 3; A.S.A. 1947, § 85-7-205.

4-7-206. Acts 1961, No. 185, § 7-206;
A.S.A. 1947, § 85-7-206.

4-7-207. Acts 1961, No. 185, § 7-207;
A.S.A. 1947, § 85-7-207.

4-7-208. Acts 1961, No. 185, § 7-208;
A.S.A. 1947, § 85-7-208.

4-7-209. Acts 1961, No. 185, § 7-209;
1967, No. 303, § 20; A.S.A. 1947, § 85-7-209.

4-7-210. Acts 1961, No. 185, § 7-210;
A.S.A. 1947, § 85-7-210.

4-7-301. Acts 1961, No. 185, § 7-301;
1967, No. 303, § 21; A.S.A. 1947, § 85-7-301.

4-7-302. Acts 1961, No. 185, § 7-302;
A.S.A. 1947, § 85-7-302.

4-7-303. Acts 1961, No. 185, § 7-303;
A.S.A. 1947, § 85-7-303.

4-7-304. Acts 1961, No. 185, § 7-304;
A.S.A. 1947, § 85-7-304.

4-7-305. Acts 1961, No. 185, § 7-305;
A.S.A. 1947, § 85-7-305.

4-7-306. Acts 1961, No. 185, § 7-306;
A.S.A. 1947, § 85-7-306.

4-7-307. Acts 1961, No. 185, § 7-307;
A.S.A. 1947, § 85-7-307.

4-7-308. Acts 1961, No. 185, § 7-308;
1967, No. 303, § 22; A.S.A. 1947, § 85-7-308.

4-7-309. Acts 1961, No. 185, § 7-309;
A.S.A. 1947, § 85-7-309.

4-7-401. Acts 1961, No. 185, § 7-401;
A.S.A. 1947, § 85-7-401.

4-7-402. Acts 1961, No. 185, § 7-402;
A.S.A. 1947, § 85-7-402.

4-7-403. Acts 1961, No. 185, § 7-403;
1967, No. 303, § 23; A.S.A. 1947, § 85-7-403.

4-7-404. Acts 1961, No. 185, § 7-404;
A.S.A. 1947, § 85-7-404.

4-7-501. Acts 1961, No. 185, § 7-501;
1967, No. 303, § 24; A.S.A. 1947, § 85-7-501.

4-7-502. Acts 1961, No. 185, § 7-502;
1967, No. 303, § 25; A.S.A. 1947, § 85-7-502.

4-7-503. Acts 1961, No. 185, § 7-503;
A.S.A. 1947, § 85-7-503; Acts 2001, No. 1439, § 15.

4-7-504. Acts 1961, No. 185, § 7-504;
A.S.A. 1947, § 85-7-504.

4-7-505. Acts 1961, No. 185, § 7-505;
A.S.A. 1947, § 85-7-505.

4-7-506. Acts 1961, No. 185, § 7-506;
A.S.A. 1947, § 85-7-506.

4-7-507. Acts 1961, No. 185, § 7-507;
A.S.A. 1947, § 85-7-507.

4-7-508. Acts 1961, No. 185, § 7-508;
A.S.A. 1947, § 85-7-508.

4-7-509. Acts 1961, No. 185, § 7-509;
A.S.A. 1947, § 85-7-509.

4-7-601. Acts 1961, No. 185, § 7-601;
A.S.A. 1947, § 85-7-601.

4-7-602. Acts 1961, No. 185, § 7-602;
A.S.A. 1947, § 85-7-602.

4-7-603. Acts 1961, No. 185, § 7-603;
A.S.A. 1947, § 85-7-603.

PART 1 — GENERAL

SECTION.

4-7-101. Short title.

4-7-102. Definitions and index of definitions.

4-7-103. Relation of chapter to treaty or statute.

4-7-104. Negotiable and nonnegotiable document of title.

SECTION.

4-7-105. Reissuance in alternative medium.

4-7-106. Control of electronic document of title.

4-7-101. Short title.

This chapter may be cited as Uniform Commercial Code — Documents of Title.

History. Acts 2007, No. 342, § 1.

4-7-102. Definitions and index of definitions.

(a) In this chapter, unless the context otherwise requires:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) [Reserved.]

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) [Reserved.]

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) "Contract for sale", § 4-2-106.

(2) "Lessee in the ordinary course of business", § 4-2A-103.

(3) "Receipt" of goods, § 4-2-103.

(c) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 2007, No. 342, § 1.

4-7-103. Relation of chapter to treaty or statute.

(a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et. seq.) but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act and this chapter, this chapter governs.

History. Acts 2007, No. 342, § 1.

4-7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

History. Acts 2007, No. 342, § 1.

4-7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

History. Acts 2007, No. 342, § 1.

4-7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

History. Acts 2007, No. 342, § 1.

PART 2 — WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**SECTION.**

4-7-201. Person that may issue a warehouse receipt — Storage under bond.

4-7-202. Form of warehouse receipt — Effect of omission.

4-7-203. Liability for nonreceipt or misdescription.

4-7-204. Duty of care — Contractual limitation of warehouse's liability.

SECTION.

4-7-205. Title under warehouse receipt defeated in certain cases.

4-7-206. Termination of storage at warehouse's option.

4-7-207. Goods must be kept separate — Fungible goods.

4-7-208. Altered warehouse receipts.

4-7-209. Lien of warehouse.

4-7-210. Enforcement of warehouse's lien.

4-7-201. Person that may issue a warehouse receipt — Storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even

if issued by a person that is the owner of the goods and is not a warehouse.

History. Acts 2007, No. 342, § 1.

4-7-202. Form of warehouse receipt — Effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under § 4-7-403 or its duty of care under § 4-7-204. Any contrary provision is ineffective.

History. Acts 2007, No. 342, § 1.

4-7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or

description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

History. Acts 2007, No. 342, § 1.

4-7-204. Duty of care — Contractual limitation of warehouse’s liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

History. Acts 2007, No. 342, § 1.

4-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

History. Acts 2007, No. 342, § 1.

4-7-206. Termination of storage at warehouse’s option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to § 4-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and § 4-7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

History. Acts 2007, No. 342, § 1.

4-7-207. Goods must be kept separate — Fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

History. Acts 2007, No. 342, § 1.

4-7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

History. Acts 2007, No. 342, § 1.

4-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by chapter 9 of this title (§ 4-9-101 et seq.).

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under § 4-7-403; or

(C) power of disposition under § 4-2-403, § 4-2A-304(2), § 4-2A-305(2), § 4-9-320, or § 4-9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

History. Acts 2007, No. 342, § 1.

4-7-210. Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

History. Acts 2007, No. 342, § 1.

PART 3 — BILLS OF LADING: SPECIAL PROVISIONS

SECTION.

- 4-7-301. Liability for nonreceipt or misdescription — “Said to contain” — “Shipper’s weight, load, and count” — Improper handling.
- 4-7-302. Through bills of lading and similar documents of title.
- 4-7-303. Diversion — Reconsignment — Change of instructions.

SECTION.

- 4-7-304. Tangible bills of lading in a set.
- 4-7-305. Destination bills.
- 4-7-306. Altered bills of lading.
- 4-7-307. Lien of carrier.
- 4-7-308. Enforcement of carrier’s lien.
- 4-7-309. Duty of care — Contractual limitation of carrier’s liability.

4-7-301. Liability for nonreceipt or misdescription — “Said to contain” — “Shipper’s weight, load, and count” — Improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count,” or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

History. Acts 2007, No. 342, § 1.

4-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing

carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

History. Acts 2007, No. 342, § 1.

4-7-303. Diversion — Reconsignment — Change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

History. Acts 2007, No. 342, § 1.

4-7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this chapter (§ 4-7-401 et seq.) against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

History. Acts 2007, No. 342, § 1.

4-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to § 4-7-105, may procure a substitute bill to be issued at any place designated in the request.

History. Acts 2007, No. 342, § 1.

4-7-306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History. Acts 2007, No. 342, § 1.

4-7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

History. Acts 2007, No. 342, § 1.

4-7-308. Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in § 4-7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

History. Acts 2007, No. 342, § 1.

4-7-309. Duty of care — Contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circum-

stances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

History. Acts 2007, No. 342, § 1.

PART 4 — WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

SECTION.

4-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

4-7-402. Duplicate document of title — Overissue.

4-7-403. Obligation of bailee to deliver — Excuse.

SECTION.

4-7-404. No liability for good-faith delivery pursuant to document of title.

4-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this chapter on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued; or

(4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

History. Acts 2007, No. 342, § 1.

4-7-402. Duplicate document of title — Overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to § 4-7-105. The issuer is liable

for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

History. Acts 2007, No. 342, § 1.

4-7-403. Obligation of bailee to deliver — Excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to § 4-2-705 or by a lessor of its right to stop delivery pursuant to § 4-2A-526;

(5) a diversion, reconsignment, or other disposition pursuant to § 4-7-303;

(6) release, satisfaction, or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under § 4-7-503(a):

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

History. Acts 2007, No. 342, § 1.

4-7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods.

History. Acts 2007, No. 342, § 1.

PART 5 — WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

SECTION.

4-7-501. Form of negotiation and requirements of due negotiation.

4-7-502. Rights acquired by due negotiation.

4-7-503. Document of title to goods defeated in certain cases.

4-7-504. Rights acquired in absence of due negotiation — Effect of diversion — Stoppage of delivery.

4-7-505. Indorser not guarantor for other parties.

SECTION.

4-7-506. Delivery without indorsement — Right to compel indorsement.

4-7-507. Warranties on negotiation or delivery of document of title.

4-7-508. Warranties of collecting bank as to documents of title.

4-7-509. Adequate compliance with commercial contract.

4-7-501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any

person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

History. Acts 2007, No. 342, § 1.

4-7-502. Rights acquired by due negotiation.

(a) Subject to §§ 4-7-205 and 4-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to § 4-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

History. Acts 2007, No. 342, § 1.

4-7-503. Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;
(B) power to obtain delivery under § 4-7-403; or
(C) power of disposition under § 4-2-403, § 4-2A-304(2), § 4-2A-305(2), § 4-9-320, or § 4-9-321(c) or other statute or rule of law; or
(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under § 4-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

History. Acts 2007, No. 342, § 1.

4-7-504. Rights acquired in absence of due negotiation — Effect of diversion — Stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor which could treat the transfer as void under § 4-2-402 or § 4-2A-308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under § 4-2-705 or a lessor under § 4-2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is

entitled to be indemnified by the seller or lessor against any resulting loss or expense.

History. Acts 2007, No. 342, § 1.

4-7-505. Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

History. Acts 2007, No. 342, § 1.

4-7-506. Delivery without indorsement — Right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

History. Acts 2007, No. 342, § 1.

4-7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under § 4-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

History. Acts 2007, No. 342, § 1.

4-7-508. Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

History. Acts 2007, No. 342, § 1.

4-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by chapter 2 of this title (§ 4-2-101 et seq.), chapter 2A of this title (§ 4-2A-101 et seq.), or chapter 5 of this title (§ 4-5-101 et seq.).

History. Acts 2007, No. 342, § 1.

PART 6 — WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

SECTION.	SECTION.
4-7-601. Lost, stolen, or destroyed documents of title.	4-7-603. Conflicting claims — Interpleader.
4-7-602. Judicial process against goods covered by negotiable document of title.	

4-7-601. Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee’s reasonable costs and attorney’s fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

History. Acts 2007, No. 342, § 1.

4-7-602. Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee

or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History. Acts 2007, No. 342, § 1.

4-7-603. Conflicting claims — Interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

History. Acts 2007, No. 342, § 1.

PART 7 — MISCELLANEOUS PROVISIONS

SECTION.

4-7-701. Effective Date.

4-7-702. [Reserved.]

SECTION.

4-7-703. Applicability.

4-7-704. Savings clause.

4-7-701. Effective Date.

This chapter takes effect on January 1, 2008.

History. Acts 2007, No. 342, § 1.

4-7-702. [Reserved.]

History. Acts 2007, No. 342, § 1.

4-7-703. Applicability.

This chapter applies to a document of title that is issued or a bailment that arises on or after January 1, 2008. This chapter does not apply to a document of title that is issued or a bailment that arises before January 1, 2008, even if the document of title or bailment would be subject to this chapter if the document of title had been issued or bailment had arisen on or after January 1, 2008. This chapter does not apply to a right of action that has accrued before January 1, 2008.

History. Acts 2007, No. 342, § 1.

4-7-704. Savings clause.

A document of title issued or a bailment that arises before January 1, 2008, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this chapter as if amendment or repeal had not

occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

History. Acts 2007, No. 342, § 1.

CHAPTER 8

INVESTMENT SECURITIES

PART.

1. SHORT TITLE AND GENERAL MATTERS.

PART 1 — SHORT TITLE AND GENERAL MATTERS

SECTION.

4-8-102. Definitions.

4-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

4-8-102. Definitions.

(a) In this chapter:

(1) “Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) “Bearer form,” as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) “Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) “Certificated security” means a security that is represented by a certificate.

(5) “Clearing corporation” means:

(i) a person that is registered as a “clearing agency” under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) “Communicate” means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 4-8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in § 4-8-103, means:

(i) a security;

(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) [Reserved.]

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 4-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5 (§ 4-8-501 et seq.).

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this chapter and the sections in which they appear are:

Appropriate person	§ 4-8-107
Control	§ 4-8-106
Delivery	§ 4-8-301
Investment company security	§ 4-8-103
Issuer	§ 4-8-201
Overissue	§ 4-8-210
Protected purchaser	§ 4-8-303
Securities account	§ 4-8-501

(c) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(d) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

History. Acts 1995, No. 425, § 1; 2005, No. 856, § 55.

4-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security

does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in § 4-9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless § 4-8-102(a)(9)(iii) applies.

History. Acts 1995, No. 425, § 1; 2001, No. 1439, § 16; 2007, No. 342, § 25.

Amendments. The 2007 amendment added (g).

CHAPTER 9

SECURED TRANSACTIONS

PART.

1. GENERAL PROVISIONS.

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

SUBPART 2. APPLICABILITY OF CHAPTER.

2. EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT.

SUBPART 1. EFFECTIVENESS AND ATTACHMENT.

SUBPART 2. RIGHTS AND DUTIES.

3. PERFECTION AND PRIORITY.

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY.

SUBPART 2. PERFECTION.

SUBPART 3. PRIORITY.

5. FILING.

SUBPART 1. FILING OFFICE — CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

6. DEFAULT.

SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

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Ark. L. Rev. Comment, Financing Statements, Descriptions, Collateral and Confusion: Arkansas Courts Tackle the New Article 9, 57 Ark. L. Rev. 951.

PART 1 — GENERAL PROVISIONS

Effective Dates. Acts 2003, No. 32, § 5: Feb. 3, 2003. Emergency clause provided: "It is found and determined by the General Assembly that inadvertent changes to the Uniform Commercial Code-Secured Transactions by the Eighty-Third General Assembly substantially altered the traditional method for establishing landlords' liens on crops which has been operating in this state for over one hundred years. The inadvertent changes have resulted in widespread confusion which threatens to seriously disrupt the traditional process of crop loans and farm land tenancy in this state's largest industry. This confusion and unintended result will continue until this act becomes effective. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the

implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

SUBPART 1

SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

SECTION.

4-9-102. Definitions and index of definitions.

4-9-101. Short title.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Survey of ssembly, Revised Article 9, 24 U. Ark. Little
Legislation, 2001 Arkansas General As- Rock L. Rev. 415.

4-9-102. Definitions and index of definitions.

(a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest or a landlord's lien under § 18-41-101 or § 18-41-103, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
 - (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (C) goods that are the subject of a consignment.
- (13) "Commercial tort claim" means a claim arising in tort with respect to which:
- (A) the claimant is an organization; or
 - (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.
- (14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 - (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.
- (17) "Commodity intermediary" means a person that:
- (A) is registered as a futures commission merchant under federal commodities law; or
 - (B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) "Communicate" means:
- (A) to send a written or other tangible record;
 - (B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing office rule.
- (19) "Consignee" means a merchant to which goods are delivered in a consignment.
- (20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (B) with respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in § 4-7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to § 4-9-519(a).

(37) "Filing office" means an office designated in § 4-9-501 as the place to file a financing statement.

(38) "Filing office rule" means a rule adopted pursuant to § 4-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying § 4-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) [Reserved.]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is

embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet

or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under § 4-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in § 4-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under § 4-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in § 4-9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 4-9-620, 4-9-621, and 4-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) [Repealed.]

(70) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under § 4-2-401, § 4-2-505, § 4-2-711(3), § 4-2A-508(5), § 4-4-210, or § 4-5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) producing or transmitting electricity, steam, gas, or water.

(b) "Control" as provided in § 4-7-106 and the following definitions in other chapters apply to this chapter:

"Applicant". Section 4-5-102.

"Beneficiary". Section 4-5-102.

"Broker". Section 4-8-102.

"Certificated security". Section 4-8-102.

"Check". Section 4-3-104.

"Clearing corporation". Section 4-8-102.

"Contract for sale". Section 4-2-106.

"Customer". Section 4-4-104.

"Entitlement holder". Section 4-8-102.

"Financial asset". Section 4-8-102.

"Holder in due course". Section 4-3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right). Section 4-5-102.

"Issuer" (with respect to a security). Section 4-8-201.

"Issuer" (with respect to documents of title). Section 4-7-102.

"Lease". Section 4-2A-103.

"Lease agreement". Section 4-2A-103.

"Lease contract". Section 4-2A-103.

"Leasehold interest". Section 4-2A-103.

"Lessee". Section 4-2A-103.

"Lessee in ordinary course of business". Section 4-2A-103.

"Lessor". Section 4-2A-103.

"Lessor's residual interest". Section 4-2A-103.

"Letter of credit". Section 4-5-102.

"Merchant". Section 4-2-104.

"Negotiable instrument". Section 4-3-104.

"Nominated person". Section 4-5-102.

"Note". Section 4-3-104.

"Proceeds of a letter of credit". Section 4-5-114.

"Prove". Section 4-3-103.

"Sale". Section 4-2-106.

"Securities account". Section 4-8-501.

"Securities intermediary". Section 4-8-102.

"Security". Section 4-8-102.

"Security certificate". Section 4-8-102.

"Security entitlement". Section 4-8-102.

"Uncertificated security". Section 4-8-102.

(c) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History. Acts 2001, No. 1439, § 1; 2003, No. 32, § 2; 2003, No. 204, § 3; 2005, No. 856, § 56; 2007, No. 342, §§ 26, 27.

A.C.R.C. Notes. Acts 2003, No. 32, § 1, provided: "The General Assembly has determined that by the enactment of Act 1439 of 2001 it inadvertently changed the law regarding landlords' liens on crops. It is the intent of this act to correct that inadvertent change, remove landlords' liens on crops from the application of the Uniform Commercial Code, reestablish Arkansas Code 18-41-101 and 18-41-103 as the law applicable to landlords' liens on crops, and thereby make landlords' liens

under Arkansas Code 18-41-101 and 18-41-103 superior to all other liens on the same collateral."

Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Amendments. The 2007 amendment substituted "4-7-201(b)" for "4-7-201(2)" in (a)(30); in (b), substituted "'Control' as provided in § 4-7-106 and the" for "The" in the introductory paragraph, inserted "Issuer" (with respect to documents of title). Section 4-7-102," and made minor punctuation and stylistic changes.

CASE NOTES

ANALYSIS

Secured Party.

Security Agreements.

Timber As Inventory Goods.

Secured Party.

Where the parties stipulated that the creditor held a properly perfected purchase money security interest in debtors' vehicle, under Arkansas law, the only conclusion was that the creditor was a secured party. In re Scruggs, 342 B.R. 571 (Bankr. E.D. Ark. 2006).

Security Agreements.

Any language that asserts that specific personal property is encumbered as security for a debt creates or provides for a security interest; language actually conveying a security interest is not necessary to create a security interest. Meeks v. First Bank of S. Ark., 264 B.R. 1 (Bankr. W.D. Ark. 2001).

A financing statement executed by the parties and filed with the county circuit clerk also served as a valid, enforceable

security agreement where (1) the financing statement recited that "this note is secured by" the specified collateral and that "the loan secured by this lien" was made through an SBA program, (2) the document designated the debtor as "debtor" and the bank as "secured party," and (3) the credit application submitted and signed by the debtor recited "briefly describe the property to be given as security ... Property Description: Accounts Receivables Inv. fixtures, etc." Meeks v. First Bank of S. Ark., 264 B.R. 1 (Bankr. W.D. Ark. 2001).

In a bank's suit to recover a judgment against debtors, the trial court did not err in holding that the bank's security interests in the debtors' crops and crop proceeds had priority over appellants' purchase money security interest because the bank had a first-in-time lien on the crops; appellants failed to cite any case law or statutory authority that defined crops as the identifiable proceeds, as defined in § 4-9-102(a)(64), of seeds. Searcy Farm Supply, LLC v. Merchs. & Planters Bank, 369 Ark. 487, 256 S.W.3d 496 (2007).

Creditor's claim was allowed as a secured claim because the guttering system at issue, which was purchased with funds provided by the creditor, was intended, as evidenced by the contract executed by the parties, to provide a purchase money security interest in consumer goods pursuant to this section. The guttering system was easily removable from the residence and was thus not a fixture under this section, which would have required the filing of a financing statement. *In re Williams*, 381 B.R. 742 (Bankr. W.D. Ark. 2008).

Timber As Inventory Goods.

Directed verdict, or motion to dismiss under Ark. R. Civ. P. 50(a), was properly

granted because mills that purchased gateway timber from an owner were buyers in the ordinary course of business under §§ 4-9-201(9), 4-9-320, and timber, once cut, became inventory goods under §§ 4-9-501, 4-9-102(48); thus, the mills had no duty to conduct a lien search to find a creditor's perfected security interest in the timber. *Fordyce Bank & Trust Co. v. Bean Timberland, Inc.*, 369 Ark. 90, 251 S.W.3d 267 (2007).

Cited: *Beal Bank, S.S.B. v. Fewell* (In re Fewell), 352 B.R. 98 (Bankr. E.D. Ark. 2006)

4-9-103. Purchase-money security interest — Application of payments — Burden of establishing.

CASE NOTES

Cited: (decisions under prior law)
Meeks v. W. Mercedes Benz Credit Corp.,
257 F.3d 843 (8th Cir. 2001).

4-9-104. Control of deposit account.

CASE NOTES

ANALYSIS

In General.
—Assignment.

In General.

—Assignment.

Where (1) the creditor acquired, by assignment, a promissory note issued to a third party, the debtor's guaranties pertaining to the note, and an agreement pledging the CD as security on the debtor's guarantee obligations, (2) the assignor had perfected its security interest in the CD under § 4-9-312(b)(1) by obtain-

ing "control" of the CD, and (3) § 4-9-313, which provided for perfection by possession, was not applicable to the CD, which was a "deposit account" as defined in § 4-9-102(29), the creditor did not have to take any additional steps, such as obtaining control over the CD, to perfect its security interest in the CD because the assignor had perfected its security interest and the security interest remained perfected, through the assignment, as against the debtor. *Beal Bank, S.S.B. v. Fewell* (In re Fewell), 352 B.R. 98 (Bankr. E.D. Ark. 2006).

4-9-105. Control of electronic chattel paper.

CASE NOTES

Cited: *McDonald Mobile Homes, Inc. v. BankAmerica Hous. Servs.*, 93 Ark. App. 256, 218 S.W.3d 376 (2005).

4-9-108. Sufficiency of description.**CASE NOTES****Sufficient Descriptions.**

Trial court did not err in concluding that the bank's financing statement was sufficiently specific to identify the covered goods, or in concluding that the lender failed to avail itself of the information on

file to protect its interests; the bank's statement was short, simple, and concise, which was all that was needed to perfect its lien. *First Nat'l Bank of Lewisville v. Bank of Bradley*, 80 Ark. App. 368, 96 S.W.3d 773 (2003).

SUBPART 2**APPLICABILITY OF CHAPTER****SECTION.****4-9-109. Scope.****4-9-109. Scope.**

(a) Except as otherwise provided in subsections (c) and (d) of this section, this chapter applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under § 4-2-401, § 4-2-505, § 4-2-711(3), or § 4-2A-508(5), as provided in § 4-9-110; and

(6) a security interest arising under § 4-4-210 or § 4-5-118.

(b) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(c) This chapter does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this chapter; or

(2) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under § 4-5-114.

(d) This chapter does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but § 4-9-333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but §§ 4-9-315 and 4-9-322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) Section 4-9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 4-9-404 applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in §§ 4-9-203 and 4-9-308;

(B) fixtures in § 4-9-334;

(C) fixture filings in §§ 4-9-501, 4-9-502, 4-9-512, 4-9-516, and 4-9-519; and

(D) security agreements covering personal and real property in § 4-9-604;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but §§ 4-9-315 and 4-9-322 apply with respect to proceeds and priorities in proceeds;

(13) an assignment of a deposit account in a consumer transaction, but §§ 4-9-315 and 4-9-322 apply with respect to proceeds and priorities in proceeds; or

(14) a transfer by a government or governmental unit.

History. Acts 2001, No. 1439, § 1; alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

A.C.R.C. Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Update: Security Interest in a Deposit Account, Some Practical Advice on How to Create a 2002 Arkansas L. Notes 45.

CASE NOTES

Applicability.

Article 9 of the Uniform Commercial Code applies to the filing and perfection of security interest in proceeds from farm

crops and is not preempted by federal law. *Nef v. AG Servs. of Am., Inc.*, 79 Ark. App. 100, 86 S.W.3d 4 (2002).

PART 2 — EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

SUBPART 1

EFFECTIVENESS AND ATTACHMENT

SECTION.

4-9-203. Attachment and enforceability of security interest — Pro-

ceeds — Supporting obligations — Formal requisites.

4-9-201. General effectiveness of security agreement.

CASE NOTES

Buyer In the Ordinary Course of Business

Directed verdict, or motion to dismiss under Ark. R. Civ. P. 50(a), was properly granted because mills that purchased gatewood timber from an owner were buyers in the ordinary course of business under §§ 4-9-201(9), 4-9-320, and timber,

once cut, became inventory goods under §§ 4-9-501, 4-9-102(48); thus, the mills had no duty to conduct a lien search to find a creditor's perfected security interest in the timber. *Fordyce Bank & Trust Co. v. Bean Timberland, Inc.*, 369 Ark. 90, 251 S.W.3d 267 (2007).

4-9-203. Attachment and enforceability of security interest — Proceeds — Supporting obligations — Formal requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one (1) of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under § 4-9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 4-8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to § 4-4-210 on the security interest of a collecting bank, § 4-5-118 on the security interest of a letter-of-credit issuer or nominated person, § 4-9-110 on a security interest arising under chapter 2 or chapter 2A, and § 4-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 4-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 28. in (b)(3)(D), inserted “or electronic documents” and “§ 4-7-106,” and made a related change.

Amendments. The 2007 amendment,

RESEARCH REFERENCES

Ark. L. Notes. Schneider, Notes on Agricultural Landlord’s Liens Under Revised Article 9 of the Uniform Commercial Code, 2002 Arkansas L. Notes 53.

CASE NOTES

ANALYSIS

Identification of Debtor.
Rights in Collateral.

Identification of Debtor.

Bankruptcy court denied a secured creditor’s motion for summary judgment where, based on the exhibits filed with the motion, a fact question remained as to whether the note, security agreement, and financing statement were executed by the debtors individually or in a representative capacity on behalf of an entity. *Peoples Bank v. Toombs* (In re Toombs), — B.R. —, 2002 Bankr. LEXIS 1832 (Bankr. E.D. Ark. Sept. 25, 2002).

Rights in Collateral.

A partnership consisting of Chapter 7 debtors was the owner of the collateral

used to secure debt owed to creditors and had sufficient rights in all of the collateral for the security interests to attach and become enforceable, as required by § 4-9-203(a)(1)(2), at the time the security interests were granted because the debtors intended for the collateral to be owned by the partnership. In re *Curtis*, 363 B.R. 572 (Bankr. E.D. Ark. 2007).

Landlords’ lien interest in the crop proceeds took priority over a perfected security interest that a creditor bank had in the same proceeds, regardless of when the bank’s conflicting security interest was perfected. *Bank of McCrory v. Morrison* (In re James), 368 B.R. 800 (Bankr. E.D. Ark. 2007).

4-9-204. After-acquired property — Future advances.

CASE NOTES

ANALYSIS

After-Acquired Collateral.
Future Advances.

After-Acquired Collateral.

Where the notes for two vehicle loans effectively cross-collateralized an existing credit card debt with the vehicle loans, an after-acquired property clause in the credit card agreement was ineffective as to the car loans; although subsection (a) of this section permitted a security interest in after-acquired collateral, subdivision (b)(1) limited such an interest to property

acquired within 10 days of the transaction. In re *Washington*, — B.R. —, 2003 Bankr. LEXIS 2046 (Bankr. E.D. Ark. Aug. 25, 2003).

Future Advances.

The trial court properly held the security agreement executed in 1993 by the debtors did not also secure the later, separate note executed by the wife in 2001, after the husband and wife had separated for the last time. *First Nat’l Bank v. Garner*, 86 Ark. App. 213, 167 S.W.3d 664 (2004).

SUBPART 2

RIGHTS AND DUTIES

SECTION.

4-9-207. Rights and duties of secured party having possession or control of collateral.

SECTION.

4-9-208. Additional duties of secured party having control of collateral.

4-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

History. Acts 2001, No. 1439, § 1; inserted “§ 4-7-106” in the introductory 2007, No. 342, § 29.

Amendments. The 2007 amendment

4-9-208. Additional duties of secured party having control of collateral.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under § 4-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under § 4-9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under § 4-9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under § 4-8-106(d)(2) or § 4-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under § 4-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an

authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 30.

Amendments. The 2007 amendment added (b)(6).

PART 3 — PERFECTION AND PRIORITY

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjourn-

ment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Notes. Watkins, A Guide to Choice of Law in Arkansas, 2005 Arkansas L. Notes 151.

SUBPART 1

LAW GOVERNING PERFECTION AND PRIORITY

SECTION.

4-9-301. Law governing perfection and

priority of security interests.

4-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in §§ 4-9-303 — 4-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

History. Acts 2001, No. 1439, § 1; 2003, No. 204, § 2; 2007, No. 342, § 31.

A.C.R.C. Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Ser-

vice Commission's authority under otherwise applicable law."

Amendments. The 2007 amendment inserted "tangible" in the introductory paragraph of (3).

4-9-302. Law governing perfection and priority of agricultural liens.

RESEARCH REFERENCES

Ark. L. Notes. Schneider, Notes on Agricultural Landlord's Liens Under Re-

vised Article 9 of the Uniform Commercial Code, 2002 Arkansas L. Notes 53.

CASE NOTES

Cited: GMAC v. Union Bank & Trust Co., 329 F.3d 594 (8th Cir. 2003).

4-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

CASE NOTES

Cited: Peoples Bank v. Toombs (In re Toombs), — B.R. —, 2002 Bankr. LEXIS 1832 (Bankr. E.D. Ark. Sept. 25, 2002).

4-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.

CASE NOTES

Cited: GMAC v. Union Bank & Trust Co., 329 F.3d 594 (8th Cir. 2003).

4-9-307. Location of debtor.

CASE NOTES

Places of Business.

Where a farming partnership had more than one place of business because it grew crops in more than one county, the farm equipment and crops had to be perfected in a county which was considered the partnership's chief executive office; all financing statements regarding the collateral at issue were filed in the proper county and were properly perfected because they were filed in the county where

the partnership's executive office was located and where both partners resided. In re Curtis, 363 B.R. 572 (Bankr. E.D. Ark. 2007).

Creditor had a perfected security interest in a farming partnership's benefits from the United States Department of Agriculture because the creditor filed a financing statement with the office of the Secretary of State. In re Curtis, 363 B.R. 572 (Bankr. E.D. Ark. 2007).

SUBPART 2

PERFECTION

SECTION.

4-9-310. When filing required to perfect security interest or agricultural lien — Security interests and agricultural liens to which filing provisions do not apply.

4-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, in-

SECTION.

vestment property, letter-of-credit rights, and money — Perfection by permissive filing — Temporary perfection without filing or transfer of possession.

4-9-313. When possession by or delivery to secured party perfects security interest without filing.

4-9-314. Perfection by control.

4-9-308. When security interest or agricultural lien is perfected — Continuity of perfection.

RESEARCH REFERENCES

Ark. L. Notes. Schneider, Notes on Agricultural Landlord's Liens Under Revised Article 9 of the Uniform Commercial Code, 2002 Arkansas L. Notes 53.

4-9-309. Security interest perfected upon attachment.

RESEARCH REFERENCES

ALR. Creation and Perfection of Security Interests in Insurance Proceeds under Article 9 of Uniform Commercial Code. 47 A.L.R.6th 347.

CASE NOTES

Purchase Money Security Interest.

Creditor's claim was allowed as a secured claim because the guttering system at issue, which was purchased with funds provided by the creditor, was intended, as evidenced by the contract executed by the parties, to provide a purchase money security interest in consumer goods pursu-

ant to this section. The guttering system was easily removable from the residence and was thus not a fixture under this section, which would have required the filing of a financing statement. In re Williams, 381 B.R. 742 (Bankr. W.D. Ark. 2008).

4-9-310. When filing required to perfect security interest or agricultural lien — Security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and § 4-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under § 4-9-308(d), (e), (f), or (g);
- (2) that is perfected under § 4-9-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in § 4-9-311(a);
- (4) in goods in possession of a bailee which is perfected under § 4-9-312(d)(1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under § 4-9-312(e), (f), or (g);
- (6) in collateral in the secured party's possession under § 4-9-313;
- (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under § 4-9-313;
- (8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under § 4-9-314;
- (9) in proceeds which is perfected under § 4-9-315; or
- (10) that is perfected under § 4-9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 32.

Amendments. The 2007 amendment inserted “electronic documents” in (b)(8).

RESEARCH REFERENCES

Ark. L. Notes. Schneider, Notes on Agricultural Landlord’s Liens Under Re-

vised Article 9 of the Uniform Commercial Code, 2002 Arkansas L. Notes 53.

CASE NOTES

ANALYSIS

Assignment of Accounts.
Motor Vehicles.

Assignment of Accounts.

Where (1) the creditor acquired, by assignment, a promissory note issued to a third party, the debtor’s guaranties pertaining to the note, and an agreement pledging the CD as security on the debtor’s guarantee obligations, (2) the assignor had perfected its security interest in the CD under § 4-9-312(b)(1) by obtaining “control” of the CD, and (3) § 4-9-313, which provided for perfection by possession, was not applicable to the CD, which was a “deposit account” as defined in § 4-9-102(29), the creditor did not have to take any additional steps, such as obtaining control over the CD, to perfect its security interest in the CD because the

assignor had perfected its security interest and the security interest remained perfected, through the assignment, as against the debtor. *Beal Bank, S.S.B. v. Fewell* (In re Fewell), 352 B.R. 98 (Bankr. E.D. Ark. 2006).

Motor Vehicles.

Chapter 7 debtor maliciously injured farm equipment that was pledged as collateral for various bank loans within the meaning of 11 U.S.C.S. § 523(a)(6) because even though the bank’s security interest therein was not perfected by the placement of evidence of the lien on the certificate of title per subsection (b) of this section, § 4-9-311, and § 27-14-801 et seq. because the security interest was still valid as between the parties to the agreement per § 4-9-317(a)(2)(A) and § 4-9-322. *Southern Bancorp South v. Richmond* (In re Richmond), 430 B.R. 846 (Bankr. E.D. Ark. 2010).

4-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

CASE NOTES

ANALYSIS

Applicability.
Judgments and Causes of Actions.

Applicability.

Article 9 of the Uniform Commercial Code applies to the filing and perfection of security interests in proceeds from farm crops and is not preempted by federal law. *Nef v. AG Servs. of Am., Inc.*, 79 Ark. App. 100, 86 S.W.3d 4 (2002).

Judgments and Causes of Actions.

Chapter 7 debtor maliciously injured farm equipment that was pledged as collateral for various bank loans within the meaning of 11 U.S.C.S. § 523(a)(6) because even though the bank’s security interest therein was not perfected by the placement of evidence of the lien on the certificate of title per § 4-9-310(b), this section, and § 27-14-801 et seq. because the security interest was still valid as between the parties to the agreement per

§ 4-9-317(a)(2)(A) and § 4-9-322. South- Richmond), 430 B.R. 846 (Bankr. E.D. ern Bancorp South v. Richmond (In re Ark. 2010)).

4-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — Perfection by permissive filing — Temporary perfection without filing or transfer of possession.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in § 4-9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under § 4-9-314;

(2) and except as otherwise provided in § 4-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under § 4-9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under § 4-9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the

secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this chapter.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 33.

Amendments. The 2007 amendment inserted “or control” in (e).

RESEARCH REFERENCES

ALR. Perfection of Security Interests by Possession, Delivery, or Control under Revised Article 9 of Uniform Commercial Code. 53 A.L.R.6th 159.

Ark. L. Notes. Laurence, Update: Some Practical Advice on How to Create a Security Interest in a Deposit Account, 2002 Arkansas L. Notes 45.

CASE NOTES

Deposit Accounts.

Where (1) creditor acquired, by assignment, a promissory note issued to a third party, the debtor's guaranties pertaining to the note, and an agreement pledging the CD as security on the debtor's guarantee obligations, (2) the assignor had perfected its security interest in the CD by obtaining “control” of the CD, and (3) § 4-9-313, which provided for perfection by possession, was not applicable to the

CD, which was a “deposit account” as defined in § 4-9-102(29), creditor did not have to take any additional steps to perfect its security interest in the CD because the assignor had perfected its security interest, and the security interest remained perfected, through the assignment, as against the debtor. *Beal Bank, S.S.B. v. Fewell* (In re Fewell), 352 B.R. 98 (Bankr. E.D. Ark. 2006).

4-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 4-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 4-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under § 4-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or § 4-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 34.

Amendments. The 2007 amendment inserted "tangible" in (a).

RESEARCH REFERENCES

ALR. Perfection of Security Interests by Possession, Delivery, or Control under Re-

vised Article 9 of Uniform Commercial Code. 53 A.L.R.6th 159.

CASE NOTES

Certificates of Deposit.

Where (1) the creditor acquired, by assignment, a promissory note issued to a third party, the debtor's guaranties pertaining to the note, and an agreement pledging the CD as security on the debtor's guarantee obligations, (2) the assignor had perfected its security interest in the CD under § 4-9-312(b)(1) by obtaining "control" of the CD, and (3) § 4-9-313, which provided for perfection by possession, was not applicable to the CD, which

was a "deposit account" as defined in § 4-9-102(29), the creditor did not have to take any additional steps, such as obtaining control over the CD, to perfect its security interest in the CD because the assignor had perfected its security interest and the security interest remained perfected, through the assignment, as against the debtor. *Beal Bank, S.S.B. v. Fewell* (In re Fewell), 352 B.R. 98 (Bankr. E.D. Ark. 2006).

4-9-314. Perfection by control.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under § 4-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one (1) of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 35.

A.C.R.C. Notes. The amendment of § 4-9-314 by Acts 2007, No. 342, § 35 includes a reference at subsection (b) to § 4-9-106. As the reference to § 4-9-106 was added to § 4-9-314(b) without being underlined as new language, and since the reference to § 4-9-106 in § 4-9-314(b)

did not already exist in the Arkansas Code, it is not clear whether the inclusion of the reference to § 4-9-106 was intentional.

Amendments. The 2007 amendment inserted "or electronic documents" and "§ 4-7-106" in (a) and (b), and made related changes.

RESEARCH REFERENCES

ALR. Perfection of Security Interests by Possession, Delivery, or Control under Re-

vised Article 9 of Uniform Commercial Code. 53 A.L.R.6th 159.

Ark. L. Notes. Laurence, Update: Security Interest in a Deposit Account, Some Practical Advice on How to Create a 2002 Arkansas L. Notes 45.

4-9-315. Secured party's rights on disposition of collateral and in proceeds.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Update: Security Interest in a Deposit Account, Some Practical Advice on How to Create a 2002 Arkansas L. Notes 45.

CASE NOTES

Proceeds.

The rules employed to distinguish the "identifiable proceeds" from other funds are liberally construed in the creditor's favor by use of the "intermediate-balance rule"; if a presumption such as the lowest intermediate balance rule were not used, no funds placed in an account with funds from other sources could be "identified." Metro. Nat'l Bank v. La Sher Oil Co., 81 Ark. App. 269, 101 S.W.3d 252 (2003).

Where a business served a writ of garnishment on a bank, but the bank had a secured interest in "proceeds" from the customer's accounts receivables, the bank could keep the money because the deposits in the customer's account were "identifiable proceeds." Metro. Nat'l Bank v. La Sher Oil Co., 81 Ark. App. 269, 101 S.W.3d 252 (2003).

SUBPART 3

PRIORITY

SECTION.

- 4-9-317. Interests that take priority over or take free of security interest or agricultural lien.
- 4-9-338. Priority of security interest or

agricultural lien perfected by filed financing statement providing certain incorrect information.

4-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under § 4-9-322; and
- (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) the security interest or agricultural lien is perfected; or
 - (B) one (1) of the conditions specified in § 4-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives

delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in §§ 4-9-320 and 4-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

History. Acts 2001, No. 1439, § 1; inserted “tangible” in (b) and “electronic documents” in (d).
2007, No. 342, § 36.

Amendments. The 2007 amendment

CASE NOTES

ANALYSIS

After-Acquired Property.
Unperfected Security Interests.

After-Acquired Property.

Since creditor did not file the financing statements centrally with the Arkansas Secretary of State, the security interest in the 2003 government payments was not properly perfected prior to the filing of the instant case; as consequence of creditor's failure to properly perfect its security interest in the 2003 government payments, the debtors could avoid the creditor's security interest in accordance with this section. In re Stevens, 307 B.R. 124 (Bankr. E.D. Ark. 2004).

Unperfected Security Interests.

Chapter 7 debtor maliciously injured farm equipment that was pledged as collateral for various bank loans within the meaning of 11 U.S.C.S. § 523(a)(6) because even though the bank's security interest therein was not perfected by the placement of evidence of the lien on the certificate of title per § 4-9-310(b), § 4-9-311, and § 27-14-801 et seq. because the security interest was still valid as between the parties to the agreement per subdivision (a)(2)(A) of this section and § 4-9-322. Southern Bancorp South v. Richmond (In re Richmond), 430 B.R. 846 (Bankr. E.D. Ark. 2010).

4-9-320. Buyer of goods.

CASE NOTES

Buyer in Ordinary Course of Business.

Directed verdict, or motion to dismiss under Ark. R. Civ. P. 50(a), was properly granted because mills that purchased gatewood timber from an owner were buy-

ers in the ordinary course of business under §§ 4-9-201(9), 4-9-320, and timber, once cut, became inventory goods under §§ 4-9-501, 4-9-102(48); thus, the mills had no duty to conduct a lien search to find a creditor's perfected security interest

in the timber. *Fordyce Bank & Trust Co. v. Bean Timberland, Inc.*, 369 Ark. 90, 251 S.W.3d 267 (2007).

4-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Update: Some Practical Advice on How to Create a Security Interest in a Deposit Account, 2002 Arkansas L. Notes 45.

Schneider, Notes on Agricultural Landlord's Liens Under Revised Article 9 of the Uniform Commercial Code, 2002 Arkansas L. Notes 53.

CASE NOTES

ANALYSIS

Attachment of Interest.
Good Faith.
Time of Filing.

Attachment of Interest.

Chapter 7 debtor maliciously injured farm equipment that was pledged as collateral for various bank loans within the meaning of 11 U.S.C.S. § 523(a)(6) because even though the bank's security interest therein was not perfected by the placement of evidence of the lien on the certificate of title per § 4-9-310(b), § 4-9-311, and § 27-14-801 et seq. because the security interest was still valid as between the parties to the agreement per § 4-9-317(a)(2)(A) and this section. *Southern Bancorp South v. Richmond* (In re Richmond), 430 B.R. 846 (Bankr. E.D. Ark. 2010).

Good Faith.

Because § 4-9-312(5) (now this section) is a "pure race" statute, mere knowledge of a competitor's claim does not affect priority of the security interest. *Nef v. AG Servs. of Am., Inc.*, 79 Ark. App. 100, 86 S.W.3d 4 (2002).

Time of Filing.

In a bank's suit to recover a judgment against debtors, the trial court did not err in holding that the bank's security interests in the debtors' crops and crop proceeds had priority over appellants' purchase money security interest because the bank had a first-in-time lien on the crops. *Searcy Farm Supply, LLC v. Merchs. & Planters Bank*, 369 Ark. 487, 256 S.W.3d 496 (2007).

4-9-324. Priority of purchase-money security interests.

CASE NOTES

Purchase Money Lien.

In a bank's suit to recover a judgment against debtors, the trial court did not err in holding that the bank's security interests in the debtors' crops and crop proceeds had priority over appellants' pur-

chase money security interest because the bank had a first-in-time lien on the crops; § 4-9-324 did not give a super priority to agricultural supplier liens. *Searcy Farm Supply, LLC v. Merchs. & Planters Bank*, 369 Ark. 487, 256 S.W.3d 496 (2007).

4-9-327. Priority of security interests in deposit account.**RESEARCH REFERENCES**

Ark. L. Notes. Laurence, Update: Security Interest in a Deposit Account, Some Practical Advice on How to Create a 2002 Arkansas L. Notes 45.

4-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in § 4-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

History. Acts 2001, No. 1439, § 1; **Amendments.** The 2007 amendment inserted “tangible” twice in (2).
2007, No. 342, § 37.

SUBPART 4**RIGHTS OF BANK****4-9-340. Effectiveness of right of recoupment or set-off against deposit account.****RESEARCH REFERENCES**

Ark. L. Notes. Laurence, Update: Security Interest in a Deposit Account, Some Practical Advice on How to Create a 2002 Arkansas L. Notes 45.

PART 4 — RIGHTS OF THIRD PARTIES

4-9-404. Rights acquired by assignee — Claims and defenses against assignee.

CASE NOTES

Assignment.

Assignee of trucking companies stood in the companies' position and was subject to any defenses a transportation company had against the companies, including fraud, and the trial court erred in finding

otherwise; in addition, because the assignee was no longer a prevailing party, the appellate court also reversed the award of attorney fees under § 16-22-308. *Am. Transp. Corp. v. Exch. Capital Corp.*, 84 Ark. App. 28, 129 S.W.3d 312 (2003).

4-9-406. Discharge of account debtor — Notification of assignment — Identification and proof of assignment — Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

RESEARCH REFERENCES

ALR. Construction and Application of U.C.C. § 9-406 and Former U.C.C. § 9-318(3) Providing that Account Debtor Is Authorized to Pay Assignor Until Receipt of Notification to Pay Assignee. 35 A.L.R.6th 437.

PART 5 — FILING

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and

that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2009, No. 942, § 4: July 31, 2009: Effective date clause provided: "This act becomes effective January 1, 2010."

Acts 2011, No. 1189, § 4: effective on and after Jan. 1, 2012.

SUBPART 1

FILING OFFICE — CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

SECTION.

4-9-501. Filing office.

4-9-510. Effectiveness of filed record.

4-9-501. Filing office.

(a) Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien,

the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) through midnight, December 31, 2012, the office of the circuit clerk in the county in which the debtor is located in this state if the debtor is engaged in farming operations and the collateral is a farm-stored commodity financed by a loan through the Commodity Credit Corporation of the United States Department of Agriculture; or

(3) the office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

History. Acts 2001, No. 1439, § 1; 2009, No. 942, § 1.

Amendments. The 2009 amendment, in (a)(2), inserted “through midnight, December 31, 2012” and substituted “a farm-stored commodity financed by a loan through the Commodity Credit Corporation of the United States Department of

Agriculture” for “equipment used in farming operations, or farm products, or accounts arising from the sale of farm products.”

Effective Dates. Acts 2009, No. 942, § 4, provided: “This act becomes effective January 1, 2010.”

CASE NOTES

ANALYSIS

Filing.
Notice.
Places of Business.
Timber As Inventory Goods

Filing.

Where creditor did not file the financing statements centrally with the Arkansas Secretary of State, the security interest in the 2003 government payments was not properly perfected prior to the filing of the instant case; as consequence of creditor's failure to properly perfect its security interest in the 2003 government payments, the debtors could avoid the creditor's security interest. In re Stevens, 307 B.R. 124 (Bankr. E.D. Ark. 2004).

In Arkansas, the applicable provision to determine the place of proper filing of a financing statement was § 4-9-501(a)(3),

not § 4-9-501(a)(2). In re Stevens, 307 B.R. 124 (Bankr. E.D. Ark. 2004).

Notice.

Finding against the seller was improper pursuant to this section and § 4-9-504 where, although the company presented evidence of its usual procedure, which included sending notice to dealers, it offered no information about the advertising or solicitation of bids, the value of collateral, or whether the seller was notified. McDonald Mobile Homes, Inc. v. BankAmerica Hous. Servs., 93 Ark. App. 256, 218 S.W.3d 376 (2005).

Places of Business.

Where a farming partnership had more than one place of business because it grew crops in more than one county, the farm equipment and crops had to be perfected in a county which was considered the part-

nership's chief executive office; all financing statements regarding the collateral at issue were filed in the proper county and were properly perfected because they were filed in the county where the partnership's executive office was located and where both partners resided. In re Curtis, 363 B.R. 572 (Bankr. E.D. Ark. 2007).

Timber As Inventory Goods

Directed verdict, or motion to dismiss under Ark. R. Civ. P. 50(a), was properly granted because mills that purchased

gatewood timber from an owner were buyers in the ordinary course of business under §§ 4-9-201(9), 4-9-320, and timber, once cut, became inventory goods under §§ 4-9-501, 4-9-102(48); thus, the mills had no duty to conduct a lien search to find a creditor's perfected security interest in the timber. Fordyce Bank & Trust Co. v. Bean Timberland, Inc., 369 Ark. 90, 251 S.W.3d 267 (2007).

Cited: Nef v. AG Servs. of Am., Inc., 79 Ark. App. 100, 86 S.W.3d 4 (2002) (decisions under prior law).

4-9-502. Contents of financing statement — Record of mortgage as financing statement — Time of filing financing statement.

CASE NOTES

Requirements.

Court erred in awarding judgment to defendant in plaintiff's action for a determination of entitlement to proceeds of a foreclosure sale because defendant's financing statement was only signed by one

of the two individual debtors, in violation of former § 4-9-402(1), despite the fact that both debtors held a personal interest in the five pieces of equipment. Farm Credit Midsouth, PCA v. Reece Contr., Inc., 359 Ark. 267, 196 S.W.3d 488 (2004).

4-9-503. Name of debtor and secured party.

RESEARCH REFERENCES

ALR. Sufficiency and Effectiveness of Designation of Debtor in Financing Statement under Uniform Commercial Code

§§ 9-503 and 9-506 (Revised 2000). 28 A.L.R.6th 461.

4-9-504. Indication of collateral.

CASE NOTES

Notice.

Finding against the seller was improper pursuant to this section and § 4-9-501 where, although the company presented evidence of its usual procedure, which included sending notice to dealers, it of-

fered no information about the advertising or solicitation of bids, the value of collateral, or whether the seller was notified. McDonald Mobile Homes, Inc. v. BankAmerica Hous. Servs., 93 Ark. App. 256, 218 S.W.3d 376 (2005).

4-9-506. Effect of errors or omissions.

RESEARCH REFERENCES

ALR. Sufficiency and Effectiveness of Designation of Debtor in Financing Statement under Uniform Commercial Code

§§ 9-503 and 9-506 (Revised 2000). 28 A.L.R.6th 461.

4-9-510. Effectiveness of filed record.

(a) A filed record is effective only to the extent that it was filed by a person that may file it under § 4-9-509.

(b) A record authorized by one (1) secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by § 4-9-515(d) is ineffective.

(d)(1) Except as provided in subdivision (d)(2) of this section, if a debtor is engaged in farming operations and the collateral described in a financing statement is an agricultural lien or a security interest in equipment used in farming operations, farm products, or accounts arising from the sale of farm products, a filing with the circuit clerk of the county where a debtor is engaged in farming operations of a financing statement, a termination statement, or a continuation statement to extend the effectiveness of a financing statement is ineffective.

(2) If a debtor is engaged in farming operations and the collateral described in a financing statement is a farm-stored commodity financed by a loan through the Commodity Credit Corporation of the United States Department of Agriculture, a filing after midnight, December 31, 2012, with the circuit clerk of the county where a debtor is engaged in farming operations of the financing statement, a termination statement, or a continuation statement to extend the effectiveness of the financing statement is ineffective.

(3) The effectiveness of a financing statement that perfects an agricultural lien or a security interest in equipment used in farming operations, farm products, or accounts arising from the sale of farm products may be continued by filing a continuation statement with the Secretary of State before the financing statement expires.

History. Acts 2001, No. 1439, § 1; 2009, No. 942, § 2.

Amendments. The 2009 amendment added (d).

Effective Dates. Acts 2009, No. 942, § 4, provided: "This act becomes effective January 1, 2010."

4-9-516. What constitutes filing — Effectiveness of filing.

CASE NOTES

Effect of Clerical Error on Perfection of Security Interest.

In a creditor's motion for summary judgment in the bankruptcy trustee's adversary proceeding to void liens held by the creditor, under former § 4-9-403(1) [see now subsection (a) of this section] the secured party did not bear the risk that the filing officer did not properly perform

his duties; a mistake by the filing officer did not affect the perfection of the creditor's security interest where the financing statement presented was proper even though no notice was given to subsequent searchers (decided under prior law). *Luker v. United States* (In re Masters), 273 B.R. 773 (Bankr. E.D. Ark. 2002).

SUBPART 2

DUTIES AND OPERATION OF FILING OFFICE

SECTION.

4-9-525. Fees. [Effective until January 1, 2012.]

SECTION.

4-9-525. Fees. [Effective January 1, 2012.]

4-9-525. Fees. [Effective until January 1, 2012.]

(a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record, whether by paper or electronically, under this part, other than an initial financing statement of the kind described in § 4-9-502(c), is:

(1) Records filed only with the Secretary of State pursuant to § 4-9-501(a)(3), from July 1, 2001, through June 30, 2015 — sixteen dollars (\$16.00), for filing and indexing the initial financing statement and termination statements, if the record consists of one (1) page. On and after July 1, 2015 — twelve dollars (\$12.00), for filing and indexing the initial financing statement and termination statements, if the record consists of one (1) page;

(2) Records filed with the circuit clerks pursuant to § 4-9-501(a)(2) — twelve dollars (\$12.00), for filing and indexing the initial financing statement and termination statements, if the record consists of one (1) page; and

(3) Fifty cents (50¢) per page up to a maximum of one hundred dollars (\$100) if the record consists of more than one (1) page.

(b)(1) The fee for filing a continuation is six dollars (\$6.00).

(2) The fee for filing a termination statement is six dollars (\$6.00) if it pertains to the filing of a financing statement before July 28, 1995.

(3) The fee for each separate search is six dollars (\$6.00).

(4) The fee for filing an assignment is six dollars (\$6.00).

(5) The fee for filing a release is six dollars (\$6.00).

(6) The fee for filing an amendment is six dollars (\$6.00).

(c) The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(d) The fee for issuing a certificate or for furnishing a copy of any record on file naming a particular debtor, is:

(1) Six dollars (\$6.00) if the record consists of one (1) page; and

(2) Fifty cents (50¢) per page, for each page up to a maximum of one hundred dollars (\$100) if the records supplied consist of more than one (1) page.

(e) This section does not fix the fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under § 4-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

History. Acts 2001, No. 1439, § 1; 2003, No. 1473, § 2; 2009, No. 942, § 3.

A.C.R.C. Notes. Acts 2003, No. 1473, § 3, provided: "The Secretary of State shall report periodically to the Treasurer of State the number of filing and indexing fees collected under Arkansas Code § 4-9-525(a)(1) during the period from July 1, 2001, through June 30, 2013, and the Treasurer of State shall deposit twelve dollars (\$12.00) of every such fee in a separate account for the benefit of those circuit clerks who qualify under this section. The proceeds in the account shall be distributed by the Treasurer of State at least quarterly to the county recorder cost fund of the counties of qualifying circuit clerks in the proportion that the total of the filing and indexing fees (other than fees charged solely for filing records related to collateral which is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer or crops growing or to be grown) collected by each qualifying clerk in calendar year 1999 under former chapter 9 of the Uniform Commercial Code bears to the total of those same filing

and indexing fees collected by all qualified distributees. Said calculations shall be determined in a reasonable manner. The clerks qualified to share in these distributions shall be the circuit clerks of the counties who file with the Treasurer of State no later than September 1, 2001 a sworn record stating the total amount of the relevant indexing and filing fees of the kind described in this section collected by said clerks in 1999, and the Treasurer of State shall use these sworn records in computing the pro rata share of each qualified distributee."

Publisher's Notes. For text of section effective January 1, 2012, see the following version.

Amendments. The 2009 amendment substituted "2015" for "2013" in two places in (a)(1) and made a minor stylistic change; in (b), deleted "whether with the Secretary of State or a circuit clerk" preceding "is six dollars" in (b)(1) - (b)(6), deleted "whether by the Secretary of State or a circuit clerk" preceding "is six dollars" in (b)(3), and made related changes.

Effective Dates. Acts 2009, No. 942, § 4, provided: "This act becomes effective January 1, 2010."

4-9-525. Fees. [Effective January 1, 2012.]

(a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record, whether by paper or electronically, under this part, other than an initial financing statement of the kind described in § 4-9-502(c), is:

(1) Records filed only with the Secretary of State pursuant to § 4-9-501(a)(3), sixteen dollars (\$16.00) for filing and indexing the initial financing statement and termination statements, if the record consists of one (1) page;

(2) Records filed with the circuit clerks pursuant to § 4-9-501(a)(2) — twelve dollars (\$12.00), for filing and indexing the initial financing statement and termination statements, if the record consists of one (1) page; and

(3) Fifty cents (50¢) per page up to a maximum of one hundred dollars (\$100) if the record consists of more than one (1) page.

(b)(1) The fee for filing a continuation is six dollars (\$6.00).

(2) The fee for filing a termination statement is six dollars (\$6.00) if it pertains to the filing of a financing statement before July 28, 1995.

(3) The fee for each separate search is six dollars (\$6.00).

(4) The fee for filing an assignment is six dollars (\$6.00).

(5) The fee for filing a release is six dollars (\$6.00).

(6) The fee for filing an amendment is six dollars (\$6.00).

(c) The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(d) The fee for issuing a certificate or for furnishing a copy of any record on file naming a particular debtor, is:

(1) Six dollars (\$6.00) if the record consists of one (1) page; and

(2) Fifty cents (50¢) per page for each page up to a maximum of one hundred dollars (\$100) if the records supplied consist of more than one (1) page.

(e) This section does not fix the fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under § 4-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

History. Acts 2001, No. 1439, § 1; 2003, No. 1473, § 2; 2009, No. 942, § 3; 2011, No. 1189, § 1.

Publisher's Notes. For text of section effective until January 1, 2012, see the preceding version.

Amendments. The 2011 amendment,

in (a)(1), deleted "from July 1, 2001, through June 30, 2015" following "pursuant to § 4-9-501(a)(3)" and deleted the former last sentence.

Effective Dates. Acts 2011, No. 1189, § 4: effective on and after Jan. 1, 2012.

PART 6 — DEFAULT

SUBPART 1

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

SECTION.

4-9-601. Rights after default — Judicial enforcement — Consignor or buyer of accounts, chat-

tel paper, payment intangibles, or promissory notes.

4-9-601. Rights after default — Judicial enforcement — Consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in § 4-9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-106, or § 4-9-107 has the rights and duties provided in § 4-9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and § 4-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in § 4-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

History. Acts 2001, No. 1439, § 1; 2007, No. 342, § 38.

Amendments. The 2007 amendment inserted "§ 4-7-106" in (b).

4-9-607. Collection and enforcement by secured party.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Update: Security Interest in a Deposit Account, Some Practical Advice on How to Create a 2002 Arkansas L. Notes 45.

4-9-610. Disposition of collateral after default.

CASE NOTES

ANALYSIS

Commercially Reasonable Sale.

—Burden of Proof.

Disposition of Collateral.

Commercially Reasonable Sale.

—Burden of Proof.

After debtor's car was repossessed and sold at auction, creditor was not entitled to a deficiency judgment against debtor where creditor failed to show the car's value, the car's condition, or that the manner of sale was reasonable. *Greenlee v. Mazda Am. Credit*, 92 Ark. App. 400, 214 S.W.3d 290 (2005).

Disposition of Collateral.

Trial court erred in dismissing a creditor's action against a debtor to recover the balance on an installment contract for the purchase of an automobile where it was a towing company's duty, as the holder of a first-priority possessory lien on the wrecked automobile, to notify the debtor of its intent to foreclose on the lien by selling the automobile. The creditor never possessed or disposed of the collateral and was therefore not required to give notice before a disposition was made. *Primus Fin. Servs. v. Seitz*, 102 Ark. App. 146, 283 S.W.3d 235 (2008).

4-9-611. Notification before disposition of collateral.**CASE NOTES****Notice of Sale.**

Trial court erred in dismissing a creditor's action against a debtor to recover the balance on an installment contract for the purchase of an automobile where it was a towing company's duty, as the holder of a first-priority possessory lien on the

wrecked automobile, to notify the debtor of its intent to foreclose on the lien by selling the automobile. The creditor had no duty to notify the debtor that the towing company intended to dispose of the collateral. *Primus Fin. Servs. v. Seitz*, 102 Ark. App. 146, 283 S.W.3d 235 (2008).

4-9-615. Application of proceeds of disposition — Liability for deficiency and right to surplus.**CASE NOTES****Deficiency Judgment.**

Bankruptcy court's confirmation of Chapter 13 debtors' amended plan proposing to surrender their 910-car in full satisfaction of a creditor's claim was reversed because (1) the "hanging paragraph" in 11 U.S.C.S. § 1325(a) made 11 U.S.C.S. § 506(a) inapplicable to 910-claims, and the 910-claim was still an "allowed secured claim" because it was secured under state law; (2) nothing in 11 U.S.C.S. § 1325(a)(5)(C) stated that a claim was considered paid in full when the debtor surrendered the vehicle, so the creditor was entitled to an unsecured deficiency claim if there was a right to a deficiency

judgment under state law; (3) the parties' security agreement gave the creditor the right to repossess and sell the vehicle in case of default, and provided that if the money from the sale was not enough to pay all that was owed, the debtor had to pay the rest, plus interest; and (4) subdivision (d)(2) of this section allowed the creditor a deficiency judgment, so the creditor was entitled to an unsecured deficiency claim in the amount of the difference between the debt owed at the time of filing and the amount received from liquidation. *AmeriCredit Fin. Servs. v. Moore*, 517 F.3d 987 (8th Cir. 2008).

CHAPTER 10**EFFECTIVE DATE AND REPEALER****SECTION.**

4-10-104. [Repealed.]

4-10-104. [Repealed.]

Publisher's Notes. This section, concerning laws not repealed, was repealed by Acts 2007, No. 342, § 39. The section

was derived from Acts 1961, No. 185, § 10-104; A.S.A. 1947, § 85-7-106.

SUBTITLE 2. MISCELLANEOUS COMMERCIAL LAW PROVISIONS

CHAPTER 18 WEIGHTS AND MEASURES

SUBCHAPTER.

1. GENERAL PROVISIONS. [REPEALED.]
2. STANDARDS OF WEIGHTS AND MEASURES. [REPEALED.]
3. UNIFORM WEIGHTS AND MEASURES LAW.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-18-101 — 4-18-107. [Repealed.]
4-18-108, 4-18-109. [Repealed.]

SECTION.

4-18-110. [Repealed.]

Effective Dates. Acts 2005, No. 914, § 8: Mar. 18, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Bureau of Standards of the State Plant Board performs valuable services for the consumers of the State of Arkansas; that the current law pertaining to weights and measures contains outdated and superseded language which hinders interpretation and enforcement by the Arkansas Bureau of Standards; and that these revisions are necessary to ensure the proper enforcement of

weights and measures standards in the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

4-18-101 — 4-18-107. [Repealed.]

Publisher's Notes. These sections, concerning goods to weigh as marked — penalty, false or short weights and measures — penalty, fruit and commodities — packing, selling, pledging, etc., with fraudulent intent — penalty, millers to keep half-bushel measure and toll dishes, legal weight of bushel of specific commodities, bushel of apples — what constitutes, and "cord" defined, were repealed by Acts 2005, No. 914, § 6. These sections were derived from the following sources:

4-18-101. Acts 1913, No. 252, § 5; C. & M. Dig., § 10486; Pope's Dig., § 14504; A.S.A. 1947, § 79-112.

4-18-102. Acts 1911, No. 283, § 1; C. &

M. Dig., § 10489; Pope's Dig., § 14507; A.S.A. 1947, § 79-116.

4-18-103. Acts 1911, No. 283, §§ 2, 3; C. & M. Dig., §§ 10490, 10491; Pope's Dig., §§ 14508, 14509; A.S.A. 1947, §§ 79-117, 79-118.

4-18-104. Rev. Stat., ch. 99, §§ 9, 10; C. & M. Dig., §§ 7246, 7247; A.S.A. 1947, §§ 79-107, 79-108.

4-18-105. Acts 1887, No. 97, § 1, p. 191; C. & M. Dig., § 10480; Pope's Dig., § 14498; Acts 1953, No. 342, § 1; A.S.A. 1947, §§ 79-113, 79-126.

4-18-106. Acts 1903, No. 91, §§ 1, 2, p. 156; C. & M. Dig., § 10479; Pope's Dig., § 14497; A.S.A. 1947, §§ 79-114, 79-115.

4-18-107. Acts 1939, No. 57, § 6; A.S.A. 1947, § 79-124.

Former §§ 4-18-101 and 4-18-102 were also amended by Acts 2005, No. 1994, § 34 which were subsequently subject to this repeal.

Former § 4-18-103 was also amended by Acts 2005, No. 1994, § 338 which was subsequently subject to this repeal.

Former § 4-18-106 was also amended by Acts 2005, No. 1994, § 35 which was subsequently subject to this repeal.

4-18-108, 4-18-109. [Repealed.]

Publisher's Notes. These sections, concerning measurement of sawlogs and timber, were repealed by Acts 2003, No. 1049, § 1. These sections were derived from the following sources:

4-18-108. Acts 1901, No. 184, §§ 1, 2, p.

338; C. & M. Dig., §§ 6994, 10481; Pope's Dig., §§ 8974, 14499; A.S.A. 1947, §§ 79-119, 79-120.

4-18-109. Acts 1943, No. 262, §§ 1-3; A.S.A. 1947, §§ 79-121 — 79-123.

4-18-110. [Repealed.]

Publisher's Notes. This section, concerning cisterns and barrel capacity, was repealed by Acts 2005, No. 914, § 6. The section was derived from Acts 1885, No.

49, § 1, p. 54; C. & M. Dig., § 10478; Pope's Dig., § 14496; A.S.A. 1947, § 79-125.

SUBCHAPTER 2 — STANDARDS OF WEIGHTS AND MEASURES

SECTION.

4-18-201 — 4-18-231. [Repealed.]

Effective Dates. Acts 2003, No. 112, § 5: Feb. 13, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law requires the bureau to annually inspect all pumps, scales, and bulk or liquefied gas metering devices in this state; because of the number of devices in the state, the Arkansas Bureau of Standards' staff is not able to adequately test and inspect all of these devices; that this act will alleviate this burden on the bureau; and that this act is immediately necessary to protect the health and welfare of the citizens of this state that utilize these metering devices. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 890, § 3: Mar. 16, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state is one (1) of only six (6) in the nation which does not assess fees for certain tests and inspections; that recent reductions of the budget of the State Plant Board has complicated the board's efforts to protect the people of the State of Arkansas from products which violate weights and measures law; and that revenue garnered from fees assessed for certain tests and inspections would aid the operations of the State Plant Board, allow the board to be competitive with the practices of other states, and enhance its ability to protect Arkansas consumers from products that violate weights and measures law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period

of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 914, § 8: Mar. 18, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Bureau of Standards of the State Plant Board performs valuable services for the consumers of the State of Arkansas; that the current law pertaining to weights and measures contains outdated and superseded language which hinders interpretation and enforcement by the Arkansas Bureau of Standards; and that these revi-

sions are necessary to ensure the proper enforcement of weights and measures standards in the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

4-18-201 — 4-18-231. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 914, § 7. The subchapter was derived from the following sources:

4-18-201. Acts 1963, No. 482, § 36; A.S.A. 1947, § 79-234.

4-18-202. Acts 1963, No. 482, §§ 1, 3, 24; A.S.A. 1947, §§ 79-201, 79-203, 79-224; 2003, No. 112, § 2.

4-18-203. Acts 1963, No. 482, § 29; A.S.A. 1947, § 79-229; Acts 1995, No. 1304, § 1.

4-18-204. Acts 1963, No. 482, §§ 6, 8; 1967, No. 157, §§ 1, 2; A.S.A. 1947, §§ 79-206, 79-208.

4-18-205. Acts 1963, No. 482, § 30; A.S.A. 1947, § 79-230.

4-18-206. Acts 1963, No. 482, § 32; A.S.A. 1947, § 79-232.

4-18-207. Acts 1963, No. 482, § 31; A.S.A. 1947, § 79-231.

4-18-208. Acts 1963, No. 482, §§ 8, 16; 1967, No. 157, § 2; 1983, No. 691, § 14; A.S.A. 1947, §§ 79-206.1, 79-208, 79-216.

4-18-209. Acts 1963, No. 482, §§ 6, 7, 17; 1967, No. 157, § 1; A.S.A. 1947, §§ 79-206, 79-207, 79-217.

4-18-210. Acts 1963, No. 482, § 27; A.S.A. 1947, § 79-227; Acts 1995, No. 1304, § 2.

4-18-211. Acts 1963, No. 482, § 28; A.S.A. 1947, § 79-228; Acts 1995, No. 1304, § 3.

4-18-212. Acts 1963, No. 482, § 2; A.S.A. 1947, § 79-202.

4-18-213. Acts 1963, No. 482, § 26; A.S.A. 1947, § 79-226.

4-18-214. Acts 1963, No. 482, § 4; A.S.A. 1947, § 79-204.

4-18-215. Acts 1963, No. 482, § 5; A.S.A. 1947, § 79-205.

4-18-216. Acts 1963, No. 482, § 9; 1967, No. 157, § 3; A.S.A. 1947, § 79-209; Acts 1999, No. 1504, § 1; 2001, No. 586, § 14; 2001, No. 587, § 29.

4-18-217. Acts 1963, No. 482, §§ 15, 18; A.S.A. 1947, §§ 79-215, 79-218.

4-18-218. Acts 1963, No. 482, § 12; A.S.A. 1947, § 79-212.

4-18-219. Acts 1963, No. 482, § 11; A.S.A. 1947, § 79-211; 2003, No. 112, § 1.

4-18-220. Acts 1963, No. 482, § 10; A.S.A. 1947, § 79-210.

4-18-221. Acts 1973, No. 591, §§ 1-3; 1975, No. 157, § 1; A.S.A. 1947, §§ 79-235 — 79-237.

4-18-222. Acts 1963, No. 482, § 13; A.S.A. 1947, § 79-213.

4-18-223. Acts 1963, No. 482, § 9; 1967, No. 157, § 3; A.S.A. 1947, § 79-209.

4-18-224. Acts 1963, No. 482, § 14; A.S.A. 1947, § 79-214.

4-18-225. Acts 1963, No. 482, § 19; A.S.A. 1947, § 79-219.

4-18-226. Acts 1963, No. 482, §§ 20, 21; A.S.A. 1947, §§ 79-220, 79-221.

4-18-227. Acts 1963, No. 482, § 22; A.S.A. 1947, § 79-222.

4-18-228. Acts 1963, No. 482, § 23; A.S.A. 1947, § 79-223.

4-18-229. Acts 1963, No. 482, § 25; A.S.A. 1947, § 79-225.

4-18-230. Acts 1963, No. 482, § 25; A.S.A. 1947, § 79-225.

4-18-231. Acts 2003, No. 112, § 3.

Former §§ 4-18-203, 4-18-210, 4-18-211 and 4-18-221 were also amended by Acts 2005, No. 1994, §§ 212, 339, 213 and 36,

respectively, which were subsequently subject to this repeal.

Section 4-18-223 was also repealed by Acts 2005, No. 890, § 2.

SUBCHAPTER 3 — UNIFORM WEIGHTS AND MEASURES LAW

SECTION.

4-18-301. Definitions.

4-18-303. Physical standards.

4-18-304. Technical requirements for weighing and measuring devices.

4-18-305. Requirements for packaging and labeling.

4-18-306. Requirements for the method of sale of commodities.

4-18-307. Requirements for unit pricing.

4-18-308. Requirements for the registration of servicepersons and service agencies for commercial weighing and measuring devices.

4-18-309. Requirements for open dating.

4-18-310. Requirements for type evaluation.

4-18-311. State Division of Weights and Measures.

4-18-312. Powers and duties of the State Plant Board.

4-18-313. Special police powers.

4-18-322. Prohibited acts.

4-18-323. Civil penalties.

4-18-324. Criminal penalties.

4-18-329. Fees for tests or inspections.

4-18-330. Fruit and commodities — Packing, selling, pledging, etc., with fraudulent intent — Penalty.

SECTION.

4-18-331. Legal weight of bushel of specific commodities.

4-18-332. Bushel of apples — Lawful measure.

4-18-333. "Cord" defined.

4-18-334. Director of the Arkansas Bureau of Standards.

4-18-335. Staff and equipment of the Arkansas Bureau of Standards.

4-18-336. State standards — Certification.

4-18-337. Office and field standards — Verification.

4-18-338. Rules and regulations — Correct and incorrect apparatus.

4-18-339. Disposition of correct and incorrect apparatus.

4-18-340. Investigations.

4-18-341. Testing generally.

4-18-342. Packages or amounts of commodities — Inspection — Disposition of nonconforming units.

4-18-343. Display of price — Fractions.

4-18-344. Testing bulk meters or liquefied petroleum gas metering devices, pumps, and scales used for commercial transactions.

Effective Dates. Acts 2003, No. 112, § 5: Feb. 13, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law requires the bureau to annually inspect all pumps, scales, and bulk or liquefied gas metering devices in this state; because of the number of devices in the state, the Arkansas Bureau of Standards' staff is not able to adequately test and inspect all of these devices; that this act will alleviate this burden on the bureau; and that this act is immediately necessary to protect the health and welfare of the citizens of this state that utilize

these metering devices. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 890, § 3: Mar. 16, 2005. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the state is one (1) of only six (6) in the nation which does not assess fees for certain tests and inspections; that recent reductions of the budget of the State Plant Board has complicated the board's efforts to protect the people of the State of Arkansas from products which violate weights and measures law; and that revenue garnered from fees assessed for certain tests and inspections would aid the operations of the State Plant Board, allow the board to be competitive with the practices of other states, and enhance its ability to protect Arkansas consumers from products that violate weights and measures law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 914, § 8: Mar. 18, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Bureau of Standards of the State Plant Board performs valuable services for the consumers of the State of Arkansas; that the current law pertaining to weights and measures contains outdated and superseded language which hinders interpretation and enforcement by the Arkansas Bureau of Standards; and that these revisions are necessary to ensure the proper enforcement of weights and measures standards in the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

4-18-301. Definitions.

For purposes of this subchapter:

(1) "Accurate" means a piece of equipment whose value or performance, including its indications, deliveries, records representations, capacity, or actual value, conforms to the standard within the applicable tolerances and other performance requirements.

(2) "Board" means the State Plant Board.

(3) "Commercial weighing and measuring equipment" means weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure.

(4) "Commodity" means an article of commerce.

(5) "Correct" as used in connection with weights and measures means conformance to all applicable specification requirements of this subchapter.

(6) "Director" means the Director of the State Plant Board.

(7) "Investigator" means a state investigator of weights and measures.

(8) "Net mass" or "net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.

(9)(A) "Package", except as modified by Section 1 of the Application of the Uniform Packaging and Labeling Regulation, whether standard package or random package, means any commodity:

(i) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or

(ii) Whose weight or measure has been determined in advance of wholesale or retail sale.

(B) An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or of measure shall be considered a package.

(10) "Person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(11) "Primary standards" means the physical standards of the state that serve as the legal reference from which all other standards for weights and measures are derived.

(12) "Random weight package" means a package that is one (1) of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of weights.

(13) "Registered service agent" means any individual, agency, firm, company, or corporation that for hire, commission, or other payment of any kind installs, services, calibrates, repairs, or reconditions a commercial weighing or measuring device, and that registers with the Director of the Arkansas Bureau of Standards.

(14) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(15) "Secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(16) "Sell" or "sale" means to barter or exchange.

(17) "Standard package" means a package that is one (1) of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations; for example, one (1) liter bottles or twelve (12) fluid ounce cans of carbonated soda; five hundred (500) gram or five (5) pound bags of sugar; one hundred (100) meters or three-hundred foot (300') packages of rope.

(18) "Weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight.

(19)(A) “Weight(s) and measure(s)” means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance and accessories associated with any or all instruments and devices.

(B) The term “weight(s) and measure(s)” shall not be construed to include meters for the measurement of electricity, natural or manufactured gas, or water when they are operated in a public utility system. Electricity, gas, and water meters are specifically excluded from this section.

History. Acts 2001, No. 587, § 1; 2005, No. 914, § 1.

4-18-303. Physical standards.

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the State Plant Board and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the board.

History. Acts 2001, No. 587, § 3.

Publisher's Notes. This section is be-

ing set out to reflect a clarification of an agency reference.

4-18-304. Technical requirements for weighing and measuring devices.

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the National Conference on Weights and Measures, published in the National Institute of Standards and Technology Handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,” and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 4.

Publisher's Notes. This section is be-

ing set out to reflect a clarification of an agency reference.

4-18-305. Requirements for packaging and labeling.

The Uniform Packaging and Labeling Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, “Uniform Laws and Regulations,” and supplements thereto or revisions

thereof, shall apply to packaging and labeling in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 5.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality."

This section is being set out to reflect a clarification of an agency reference.

4-18-306. Requirements for the method of sale of commodities.

The Uniform Regulation for the Method of Sale of Commodities as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the method of sale of commodities in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 6.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality".

This section is being set out to reflect a clarification of an agency reference.

4-18-307. Requirements for unit pricing.

The Uniform Unit Pricing Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to unit pricing in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 7.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality".

This section is being set out to reflect a clarification of an agency reference.

4-18-308. Requirements for the registration of servicepersons and service agencies for commercial weighing and measuring devices.

The Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the registration of servicepersons and service agencies in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 8.

This section is being set out to reflect a clarification of an agency reference.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality".

4-18-309. Requirements for open dating.

The Uniform Open Dating Regulation as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to open dating in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 9.

This section is being set out to reflect a clarification of an agency reference.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality".

4-18-310. Requirements for type evaluation.

The Uniform Regulation for National Type Evaluation as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to type evaluation in the state, as adopted, or amended and adopted, by rule of the State Plant Board.

History. Acts 2001, No. 587, § 10.

This section is being set out to reflect a clarification of an agency reference.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality".

4-18-311. State Division of Weights and Measures.

There is hereby created a State Division of Weights and Measures located for administrative purposes within the Arkansas Bureau of Standards of the State Plant Board. The division is charged with, but not limited to, performing the following functions on behalf of the citizens of the state:

(a) Assuring that weights and measures in commercial services within the state are suitable for their intended use, properly installed, and accurate, and are so maintained by their owner or user.

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold, or purchased within the state.

(c) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the division.

(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies.

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

History. Acts 2001, No. 587, § 11.

Publisher's Notes. This section is being set out to reflect corrections in the section catchline.

4-18-312. Powers and duties of the State Plant Board.

The State Plant Board shall:

(a) Maintain traceability of the state standards to the national standards in the possession of the National Institute of Standards and Technology.

(b) Enforce the provisions of this subchapter.

(c) Issue reasonable regulations for the enforcement of this subchapter, which regulations shall have the force and effect of law.

(d) Establish labeling requirements, establish requirements for the presentation of cost-per-unit information, establish standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity; and may establish requirements for open dating information.

(e) Grant any exemptions from the provisions of this subchapter or any regulations promulgated pursuant thereto when appropriate to the maintenance of good commercial practices within the state.

(f) Conduct investigations to ensure compliance with this subchapter.

(g) Delegate to appropriate personnel any of these responsibilities for the proper administration of this office.

(h) Test annually the standards for weights and measures used by any city or county within the state, and approve the same when found to be correct.

(i) Have the authority to inspect and test commercial weights and measures kept, offered, or exposed for sale.

(j) Inspect and test, to ascertain if they are correct, weights and measures commercially used:

(1) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count, or,

(2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count.

(k) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the General Assembly.

(l) Approve for use, and may mark, such commercial weights and measures as are found to be correct, and shall reject and order to be corrected, replaced, or removed such commercial weights and measures

as are found to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The board shall remove from service and may seize the weights and measures found to be incorrect that are not capable of being made correct.

(m) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this subchapter or regulations promulgated pursuant thereto. In carrying out the provisions of this subsection, the board shall employ recognized sampling procedures, such as are adopted by the National Conference on Weights and Measures and are published in the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods".

(n) Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever the board determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numerical count, time, or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion.

(o) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce.

(p) Provide for the training of weights and measures personnel, and may also establish minimum training and performance requirements which shall then be met by all weights and measures personnel, whether county, municipal, or state. The Director of the State Plant Board may adopt the training standards of the National Conference on Weights and Measures' National Training Program.

(q) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (1) the accuracy of prices and computations and the correct use of the equipment, and (2) if such system utilizes scanning or coding means in lieu of manual entry, the accuracy of prices printed or recalled from a database. In carrying out the provisions of this section, the board shall (i) employ recognized procedures, such as are designated in National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations, "Examination Procedures for Price Verification," (ii) issue necessary rules and regulations regarding the accuracy of advertised prices and automated systems for retail price charging (referred to as "point-of-sale systems") for the enforcement of this section, which rules shall have the force and effect of law; and (iii) conduct investigations to ensure compliance.

History. Acts 2001, No. 587, § 12.

This section is being set out to reflect a clarification of an agency reference.

Publisher's Notes. The full title of Handbook 130 is "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality."

4-18-313. Special police powers.

When necessary for the enforcement of this subchapter or regulations promulgated pursuant thereto, the State Plant Board is:

(a) Authorized to enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, he/she shall first present his/her credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained.

(b) Empowered to issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale.

(c) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this subchapter or regulations promulgated pursuant thereto.

(d) Empowered to stop any commercial vehicle and, after presentation of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him to proceed with the vehicle to some specified place for inspection.

(e) With respect to the enforcement of this subchapter, the board is hereby vested with special police powers, and is authorized to arrest, with warrant, any violator of this subchapter.

History. Acts 2001, No. 587, § 13.

ing set out to reflect a clarification of an agency reference.

Publisher's Notes. This section is be-

4-18-322. Prohibited acts.

(a) No person shall:

(1) Use or have in possession for use in commerce any incorrect weight or measure;

(2) Sell or offer for sale for use in commerce any incorrect weight or measure;

(3) Remove any tag, seal, decal, or mark from any weight or measure without specific written authorization from the proper authority;

(4) Hinder or obstruct any weights and measures official or registered service agent in the performance of his or her duties;

(5) Violate any provisions of this subchapter or regulations promulgated under it;

(6) Sell or offer for sale any weight or measure for use in commerce, unless it bears an Arkansas Bureau of Standards approved seal or decal, if the seal or decal is applicable to the weight or measure;

(7) Neglect or refuse to exhibit a weight or measure under the person's control or in the person's possession to any weights and measures official or a registered service agent for inspection, examination, or testing as required by law;

(8) Perform an annual inspection, examination, or test on a weight or measure if that person is not a weights and measures official or a registered service agent;

(9) Impersonate in any way the Director of the Arkansas Bureau of Standards, the deputy director, any one of the investigators, or a registered agent of the Arkansas Bureau of Standards by the use of a seal or decal, or in any other manner; or

(10) Violate any provision of this subchapter or rules promulgated under § 4-18-328.

(b) A person may be prosecuted for a violation of this subchapter notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this subchapter.

History. Acts 2001, No. 587, § 22;
2003, No. 112, § 4; 2005, No. 914, § 2.

4-18-323. Civil penalties.

(a)(1) Any person who by himself or herself, by his or her servant or agent, or as the servant or agent of another person, commits any of the acts enumerated in § 4-18-322 may be assessed by the State Plant Board a civil penalty of:

(A) Not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600) for a first violation;

(B) Not less than four hundred dollars (\$400) nor more than one thousand two hundred dollars (\$1,200) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than seven hundred dollars (\$700) nor more than two thousand dollars (\$2,000) for a third violation within three (3) years after the date of the first violation.

(2) For a violation to be considered as a second or subsequent offense, it must be a repeat of a violation as enumerated in § 4-18-322.

(b)(1) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(2) The board or subcommittee thereof is authorized to conduct the hearing after giving appropriate notice to the respondent.

(3) The decision of the board is subject to appropriate judicial review.

(c)(1) If the respondent has exhausted his or her administrative appeals and the civil penalty has been upheld, he or she shall pay the

civil penalty within twenty (20) calendar days after the effective date of the final decision.

(2) If the respondent fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(3) Any civil penalty collected under this section shall be transmitted to the Plant Board Fund.

History. Acts 2001, No. 587, § 23;
2005, No. 914, § 3.

4-18-324. Criminal penalties.

Any person who intentionally commits any of the acts enumerated in § 4-18-322 is guilty of a Class A misdemeanor.

History. Acts 2001, No. 587, § 24;
2005, No. 914, § 4.

4-18-329. Fees for tests or inspections.

(a) The Arkansas Bureau of Standards of the State Plant Board shall collect charges as provided in this section for the testing and certification of testing apparatus and for testing and inspection made pursuant to this chapter.

(b) The bureau shall collect the following fees for testing and inspection and for no other purposes:

(1)(A) For International Organization of Legal Metrology Class E1 and E2 and American National Standards Institute and ASTM International Class 1, weighing one kilogram (1 kg) or less, the bureau shall collect a fee for testing of not less than sixty dollars (\$60.00) or more than one hundred eighty dollars (\$180); and

(B) For International Organization of Legal Metrology Class E1 and E2 and American National Standards Institute and ASTM International Class 1, weighing more than one kilogram (1 kg) but not more than thirty kilograms (30 kg), the bureau shall collect a fee for testing of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300);

(2)(A) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing two pounds (2 lbs.) or one kilogram (1 kg) or less, the bureau shall collect a fee for testing of not less than twenty dollars (\$20.00) or more than sixty dollars (\$60.00);

(B) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing more than two pounds (2 lbs.) or one kilogram (1 kg), but not more than

twenty pounds (20 lbs.) or ten kilograms (10 kg), the bureau shall collect a fee for testing of not less than forty dollars (\$40.00) or more than one hundred twenty dollars (\$120);

(C) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing more than twenty pounds (20 lbs.) or ten kilograms (10 kg), but not more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), the bureau shall collect a fee for testing of not less than eighty dollars (\$80.00) or more than two hundred forty dollars (\$240); and

(D) For International Organization of Legal Metrology Class E2, F1, F2, American National Standards Institute and ASTM International Class 1 and 1.1, 2, 3, and 4(5), and National Institute of Standards and Technology Class S, S-1, and P(Q), weighing more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), but not more than twenty-five hundred pounds (2,500 lbs.) or one thousand two hundred fifty kilograms (1,250 kg), the bureau shall charge a fee for testing of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300);

(3)(A) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing ten pounds (10 lbs.) or five kilograms (5 kg) or less, the bureau shall charge a fee for testing of not less than seven dollars (\$7.00) or more than twenty-one dollars (\$21.00);

(B) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing more than ten pounds (10 lbs.) or five kilograms (5 kg), but not more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), the bureau shall charge a fee for testing of not less than twelve dollars (\$12.00) or more than thirty-six dollars (\$36.00);

(C) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing more than fifty pounds (50 lbs.) or thirty kilograms (30 kg), but not more than one thousand pounds (1,000 lbs.) or five hundred kilograms (500 kg), the bureau shall charge a fee for testing of not less than eighteen dollars (\$18.00) or more than fifty-four dollars (\$54.00); and

(D) For International Organization of Legal Metrology Class M1, M2, and M3, American National Standards Institute and ASTM International Class 6(5), and National Institute of Standards and Technology Class F and (Q), weighing more than one thousand pounds (1,000 lbs.) or five hundred kilograms (500 kg), but not more

than two thousand five hundred pounds (2,500 lbs.) or one thousand two hundred fifty kilograms (1,250 kg), the bureau shall charge a fee for testing of not less than forty dollars (\$40.00) or more than one hundred twenty dollars (\$120);

(4)(A) For volume testing of five gallons (5 gal.) or twenty liters (20 l) or less, the bureau shall charge a fee of forty dollars (\$40.00);

(B) For volume testing of more than five gallons (5 gal.) or twenty liters (20 l), but not more than fifty gallons (50 gal.) or two hundred liters (200 l), the bureau shall charge a fee of one hundred dollars (\$100);

(C) For volume testing of more than fifty gallons (50 gal.) or two hundred liters (200 l), but not more than one hundred gallons (100 gal.) or four hundred liters (400 l), the bureau shall charge a fee of two hundred dollars (\$200);

(D) For volume testing of more than one hundred gallons (100 gal.) or four hundred liters (400 l), but not more than one hundred fifty gallons (150 gal.) or six hundred liters (600 l), the bureau shall charge a fee of two hundred fifty dollars (\$250);

(E) For volume testing of more than one hundred fifty gallons (150 gal.) or six hundred liters (600 l), but not more than two hundred gallons (200 gal.) or eight hundred liters (800 l), the bureau shall charge a fee of three hundred dollars (\$300); and

(F) For volume testing of more than two hundred gallons (200 gal.) or eight hundred liters (800 l), but not more than three hundred seventy-five gallons (375 gal.) or one thousand five hundred liters (1,500 l), the bureau shall charge a fee for testing of four hundred fifty dollars (\$450);

(5)(A) For volume gravimetric testing of not more than one quart (1 qt.) or one liter (1 l), the bureau shall charge a fee for testing of seventy-five dollars (\$75.00);

(B) For volume gravimetric testing of more than one quart (1 qt.) or one liter (1 l), but not more than five gallons (5 gal.) or twenty liters (20 l), the bureau shall charge a fee for testing of two hundred dollars (\$200); and

(C) For volume gravimetric testing of more than five gallons (5 gal.) or twenty liters (20 l), but not more than fifty gallons (50 gal.) or two hundred liters (200 l), the bureau shall charge a fee of five hundred dollars (\$500);

(6) For volume liquefied petroleum gas (LPG) provers of not more than one hundred gallons (100 gal.) or four hundred liters (400 l), the bureau shall charge a fee for testing of five hundred dollars (\$500);

(7) For length testing of tapes and rigid rules, the bureau shall charge a fee of seven dollars (\$7.00) per point tested;

(8)(A) For annual inspection and testing of grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

(B) For calibration of grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

(C) For recertification of grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);

- (D) For placing new or rejected grain moisture meters in service, the bureau shall charge a fee of fifty dollars (\$50.00); and
 - (E) For noncompliance reports for rejected grain moisture meters, the bureau shall charge a fee of fifty dollars (\$50.00);
 - (9) For special testing or services not listed in the fee schedule, the bureau shall charge a fee of fifty dollars (\$50.00) per hour; and
 - (10) For cleaning of standards, special handling, and packing, the bureau shall charge a fee of fifty dollars (\$50.00) per hour.
- (c) Funds collected under this section shall be deposited into the State Treasury as special revenue credited to the Plant Board Fund to be used exclusively for the maintenance of facilities and equipment of the bureau.
- (d) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

History. Acts 2005, No. 890, § 1.

4-18-330. Fruit and commodities — Packing, selling, pledging, etc., with fraudulent intent — Penalty.

- (a) Any person who packs any fruit or other merchantable commodity with the fraudulent intent of misrepresenting the contents, either as to quality or quantity, shall on conviction be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment not exceeding one (1) year, or both.
- (b) Any person who sells or pledges any commodity, knowing it to be packed in a fraudulent manner with the intent to cheat and deceive, shall on conviction be assessed a civil penalty as provided in § 4-18-323.

History. Acts 2005, No. 914, § 5.

4-18-331. Legal weight of bushel of specific commodities.

The legal weight per bushel of the following shall be:

(1) Corn, shelled	56 lbs.
(2) Corn in ear, husked	70 lbs.
(3) Corn in ear, unhusked	74 lbs.
(4) Wheat	60 lbs.
(5) Oats	32 lbs.
(6) Cottonseed	32 lbs.
(7) Cornmeal	48 lbs.
(8) Barley	48 lbs.
(9) Rye	56 lbs.
(10) Potatoes	60 lbs.
(11) Potatoes, sweet	50 lbs.
(12) Onions	57 lbs.

(13) White beans	60 lbs.
(14) Peas	60 lbs.
(15) Flax seed	56 lbs.
(16) Blue grass seed	14 lbs.
(17) Clover seed	60 lbs.
(18) Timothy seed	60 lbs.
(19) Millet seed	50 lbs.
(20) Buckwheat	52 lbs.
(21) Red top	14 lbs.
(22) Orchard grass	14 lbs.
(23) Sorghum	50 lbs.
(24) Green apples	50 lbs.
(25) Dried apples	24 lbs.
(26) Dried peaches	33 lbs.
(27) Bran	20 lbs.
(28) Salt	50 lbs.
(29) Turnips	57 lbs.
(30) Broom corn seed	48 lbs.
(31) Johnson grass	28 lbs.

History. Acts 2005, No. 914, § 5.

4-18-332. Bushel of apples — Lawful measure.

(a) A box nine inches (9") deep, twelve inches (12") wide, and twenty inches (20") long constitutes a lawful bushel measure for apples.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be assessed a civil penalty consistent with § 4-18-323.

History. Acts 2005, No. 914, § 5.

4-18-333. "Cord" defined.

A cord shall be defined as containing one hundred twenty-eight cubic feet (128 cu. ft.), and a unit of pulpwood shall be defined as containing one hundred twenty-eight cubic feet (128 cu. ft.), and this shall be the basis for purchase of timber or payment of labor in severing timber if the production is handled on cordage basis.

History. Acts 2005, No. 914, § 5.

4-18-334. Director of the Arkansas Bureau of Standards.

(a) The Director of the Arkansas Bureau of Standards is appointed by the Governor and shall serve at the pleasure of the Governor.

(b) The director is vested with police powers and may:

(1) Arrest with warrant any violator of:

(A) This subchapter; or

(B) Any other act dealing with weights and measures; and

(2) Seize for use as evidence with warrant incorrect or unsealed weights and measures or amounts or packages of commodity found to be used, retained, offered, exposed for sale, or sold in violation of law.

(c) The director may establish divisions or offices within the Arkansas Bureau of Standards as he or she may deem necessary for the administration of the duties of the bureau.

(d) The director shall:

(1) Have custody of the state standards of weights and measures and of the other standards and equipment provided under this subchapter;

(2) Keep accurate records of the standards and equipment;

(3) Maintain a general supervision over weights and measures offered for sale, sold, or in use in the state; and

(4) Make a report to the Governor on the activities of his or her office at the end of each fiscal year.

History. Acts 2005, No. 914, § 5.

4-18-335. Staff and equipment of the Arkansas Bureau of Standards.

(a) The Arkansas Bureau of Standards shall be composed of a deputy director, state investigators, and technical and clerical personnel of weights and measures sufficient to accomplish the intent of this subchapter.

(b) The powers and duties given to and imposed upon the Director of the Arkansas Bureau of Standards by this subchapter are also given to and imposed upon the deputy director and investigators when acting at the direction of the director.

History. Acts 2005, No. 914, § 5.

4-18-336. State standards — Certification.

(a) After certification for use by the National Institute of Standards and Technology, the weights and measures in conformity with federal standards shall be the state standards of weight and measure.

(b) The state standards shall:

(1) Be kept in a safe and suitable place in the office or laboratory of the Arkansas Bureau of Standards;

(2) Not be removed from the office or laboratory except for repairs or for certification;

(3) Be submitted at least one (1) time every ten (10) years to the National Institute of Standards and Technology for certification; and

(4) Be used only in verifying the office standards and for scientific purposes.

History. Acts 2005, No. 914, § 5.

4-18-337. Office and field standards — Verification.

(a) In addition to the state standards provided under § 4-18-336, the state shall supply at least one (1) complete set of copies of the state standards to be kept in the office or laboratory of the Arkansas Bureau of Standards, which shall be known as “office standards”, also “field standards”, and equipment as may be found necessary to carry out the provisions of this subchapter.

(b) The office standards and field standards shall be verified upon their initial receipt and verified at least one (1) time each following year by comparing the office standards with the state standards and comparing the field standards with the office standards.

History. Acts 2005, No. 914, § 5.

4-18-338. Rules and regulations — Correct and incorrect apparatus.

(a) The Arkansas Bureau of Standards shall issue from time to time reasonable rules for the enforcement of this subchapter.

(b) These rules may include:

(1) A system of determining the qualifications for registration of and issuing permits to sales and service personnel who for compensation place weighing and measuring devices into commercial use in this state;

(2) Standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(3) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by investigators of weights and measures in the discharge of their official duties;

(4) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval to be used by registered agents of weights and measures in the discharge of their official duties; and

(5) Exemptions from the sealing or marking requirements of § 4-18-341 with respect to weights and measures of character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question.

(c) The rules shall include specifications, tolerances, and regulations for weights and measures specified in § 4-18-341 designed to eliminate from use without prejudice to apparatus that conform as closely as practicable to the official standards apparatus that:

(1) Are not accurate and correct;

(2) Are constructed so that they are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(3) Facilitate the perpetration of fraud.

(d) As used in this subchapter, an apparatus shall be deemed to be correct when it conforms to all applicable requirements promulgated as specified in this section.

History. Acts 2005, No. 914, § 5.

4-18-339. Disposition of correct and incorrect apparatus.

(a)(1) The Director of the Arkansas Bureau of Standards shall:

(A) Approve for use and seal or mark with appropriate devices, weights and measures as he or she finds upon inspection and testing to be correct as defined in § 4-18-338; and

(B) Reject and mark or tag as “rejected” weights and measures as he or she finds upon inspection or test to be incorrect as defined in § 4-18-338, but which in his or her best judgment are susceptible to satisfactory repair.

(2) However, the sealing or marking shall not be required with respect to weights and measures that are excepted under a rule of the director issued under § 4-18-338.

(b) The director shall condemn, seize, and destroy weights and measures found to be incorrect and that in his or her best judgment are not susceptible to satisfactory repair.

(c) Weights and measures that have been rejected may be confiscated and destroyed by the director if not corrected as required by subsections (d) and (e) of this section or if used or disposed of contrary to the requirements of subsection (f) of this section.

(d) Weights and measures that have been rejected under the authority of the director or a sealer shall remain subject to the control of the rejecting authority until suitable repair or disposition has been made as required by this section.

(e) The owners of rejected or noncompliant weights and measures shall cause the weights and measures to be made accurate and correct or may dispose of them in the manner specifically authorized by the director.

(f) Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined and found to be accurate and correct or until specific written permission for use is issued by the director.

History. Acts 2005, No. 914, § 5.

4-18-340. Investigations.

The Director of the Arkansas Bureau of Standards shall investigate complaints made to him or her concerning violations of this subchapter and upon his or her own initiative shall:

(1) Conduct investigations as he or she deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this subchapter; and

(2) Promote the general objective of accuracy and correctness in the determination and representation of quantity in commercial transactions.

History. Acts 2005, No. 914, § 5.

4-18-341. Testing generally.

(a) When not otherwise provided by law, the Director of the Arkansas Bureau of Standards shall have the power to inspect and test to ascertain if all weights and measures kept, offered, or exposed for sale are accurate and correct.

(b) Within each calendar year, or less frequently if in accordance with a schedule issued by him or her or as otherwise determined, the director shall inspect and test to ascertain if all weights and measures commercially used in determining the weight, measurement, or count of commodities or things sold, offered, or exposed for sale on the basis of weight, measure, or count or in computing the basic charge or payment for services rendered on the basis of weight, measure, or count are accurate and correct.

(c)(1) However, with respect to single-service devices designed to be used commercially only one (1) time and then to be discarded and to devices uniformly mass produced as by means of a mold or die and not susceptible to individual adjustment, tests may be made on representative samples of the devices.

(2) The lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

History. Acts 2005, No. 914, § 5.

4-18-342. Packages or amounts of commodities — Inspection — Disposition of nonconforming units.

(a)(1) The Director of the Arkansas Bureau of Standards shall from time to time weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether the packages or amounts of commodities contain the amounts represented and whether they are kept, offered, or exposed for sale or sold in accordance with law.

(2) When the packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the director may order them off sale and may so mark or tag them as to show them to be illegal.

(b) A person shall not:

(1) Sell, keep, offer, or expose for sale in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(2) Dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section or that has not been brought into compliance with legal requirements in any manner except with the specific approval of the director.

History. Acts 2005, No. 914, § 5.

4-18-343. Display of price — Fractions.

Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half ($\frac{1}{2}$) the height and width of the numerals representing the whole cents.

History. Acts 2005, No. 914, § 5.

4-18-344. Testing bulk meters or liquefied petroleum gas metering devices, pumps, and scales used for commercial transactions.

(a)(1) As used in this section, “pump” means a fuel pump that dispenses products used as motor vehicle fuels, including, but not limited to, gasoline, kerosene, or diesel.

(2) As used in this section, “bulk meter” includes, but is not limited to, a pipeline terminal meter, a rack meter, or a tank truck meter.

(b)(1)(A) A person who owns a bulk meter or liquefied petroleum gas metering device for a commercial transaction must engage a registered service agent to annually inspect and test for the accuracy and correctness of the device.

(B) The duty of the Director of the Arkansas Bureau of Standards to inspect and test bulk meters or liquefied petroleum gas metering devices used for commercial transactions is fulfilled by the registered service agent’s annual inspection and test for accuracy.

(2)(A) A person who owns a pump or scale for a commercial transaction must engage a registered service agent to annually inspect and test for the accuracy and correctness of the pump or scale.

(B) The director’s duty to inspect and test pumps or scales used for commercial transactions is fulfilled by the registered service agent’s annual inspection and test for accuracy.

(c) A registered service agent shall perform the recalibration if the inspection or test indicates the bulk meter or liquefied petroleum gas metering device, pump, or scale needs to be recalibrated.

(d)(1) After the approval of a decal by the Arkansas Bureau of Standards, a registered service agent shall place an approved decal conspicuously on the bulk meter or liquefied petroleum gas metering device, pump, or scale which indicates that it is suitable for trade in accordance with the National Institute of Standards and Technology Handbook 44 and 112, as adopted by the bureau.

(2) A registered service company shall provide security seals approved by the bureau to any individual employed as a registered technician authorized to perform inspections and tests.

(3) A registered technician shall place an approved security seal on the device to prevent any unauthorized access to the adjusting mechanism unless otherwise authorized by the bureau.

(e) The registered service agent shall provide a copy of all bureau-approved inspection and test reports to the bulk meter or liquefied petroleum gas metering device, pump, or scale owner and to the director.

(f)(1) The registered service agent shall retain a copy of all inspection and test reports for a period of three (3) years.

(2) The owner of the device shall retain a copy of all inspection and test reports at the device location for a period of three (3) years.

(g) The director may adopt a system to periodically monitor, inspect, or test bulk meters or liquefied petroleum gas metering devices, pumps, and scales inspected and tested by a registered service agent to check the accuracy of the work of the service agent.

(h)(1) The director may suspend or revoke the certificate of registration of a registered service agent for violating any provision of this subchapter.

(2) If the registration of a registered service agent has been suspended or revoked, then the service agent may not register with the bureau as a service agent for at least one (1) year.

History. Acts 2005, No. 914, § 5.

CHAPTER 20

MODEL REGISTERED AGENTS ACT

SECTION.

- 4-20-101. Short title.
- 4-20-102. Definitions.
- 4-20-103. Fees.
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- 4-20-105. Appointment of registered agent.
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- 4-20-108. Change of registered agent by entity.
- 4-20-109. Change of name or address by noncommercial registered agent.
- 4-20-110. Change of name, address, or

SECTION.

- type of organization by
commercial registered
agent.
- 4-20-111. Resignation of registered agent.
- 4-20-112. Appointment of agent by nonfiling or nonqualified foreign entity.
- 4-20-113. Service of process on entities.
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- 4-20-116. Consistency of application.
- 4-20-117. Relation to Electronic Signatures in Global and National Commerce Act.
- 4-20-118. Savings clause.

Effective Dates. Acts 2007, No. 638,
§ 70: Sept. 1, 2007.

4-20-101. Short title.

This chapter may be cited as the Model Registered Agents Act.

History. Acts 2007, No. 638, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Goforth, The Model Registered Agents Act — A Word (or two) to the Wise, 2008 Ark. L. Notes 43.

4-20-102. Definitions.

In this chapter:

(1) “Appointment of agent” means a statement appointing an agent for service of process filed by:

(A) a domestic or foreign unincorporated nonprofit association under § 4-28-510 of the Uniform Unincorporated Nonprofit Association Act; or

(B) a domestic entity that is not a filing entity or a nonqualified foreign entity under § 4-20-112 or a similar provision of the law under any jurisdiction.

(2) “Commercial registered agent” means an individual or a domestic or foreign entity that is listed under § 4-20-106.

(3) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

(4) “Entity” means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(A) an individual;

(B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(C) an association or relationship that is not a partnership by reason of § 4-46-202(c);

(D) a decedent’s estate; or

(E) a public corporation, government or governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.

(5) “Filing entity” means an entity that is created by the filing of a public organic document.

(6) “Foreign entity” means an entity other than a domestic entity.

(7) “Foreign qualification document” means an application for a certificate of authority or other foreign qualification filing with the Secretary of State by a foreign entity.

(8) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for the election of the governors of the entity; or

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) "Interest" means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(11) "Interest holder" means a direct holder of an interest.

(12) "Jurisdiction of organization," with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under § 4-20-106 and that is:

(A) an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or

(B) the individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to 4-20-105(a)(2)(B).

(14) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the Secretary of State.

(15) "Nonresident LLP statement" means:

(A) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(B) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(17) "Organic rules" means the public organic document and private organic rules of an entity.

(18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(19) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(21) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the Secretary of State.

(22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Registered agent” means a commercial registered agent or a noncommercial registered agent.

- (24) “Registered agent filing” means:
- (A) the public organic document of a domestic filing entity;
 - (B) a nonresident LLP statement;
 - (C) a foreign qualification document; or
 - (D) an appointment of agent.

- (25) “Represented entity” means:
- (A) a domestic filing entity;
 - (B) a domestic or qualified foreign limited liability partnership that does not have an office in this state;
 - (C) a qualified foreign entity;
 - (D) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
 - (E) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or
 - (F) a nonqualified foreign entity for which an appointment of agent has been filed.

- (26) “Sign” means, with present intent to authenticate or adopt a record:
- (A) to execute or adopt a tangible symbol; or
 - (B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

- (28) “Type,” with respect to an entity, means a generic form of entity:
- (A) recognized at common law; or
 - (B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

History. Acts 2007, No. 638, § 1.

4-20-103. Fees.

(a) The Secretary of State shall collect the following fees when a filing is made under this chapter:

document	fee
(1) commercial registered agent listing statement	\$50.00
(2) commercial registered agent termination statement	50.00
(3) statement of change	no fee
(4) statement of resignation	no fee
(5) statement appointing an agent for service of process	no fee
(b) The Secretary of State shall collect the following fees for copying and certifying a copy of any document filed under this chapter:	
(1) Fifty cents (\$.50) a page for copying; and	

- (2) Five dollars (\$5.00) for a certificate.

History. Acts 2007, No. 638, § 1.

4-20-104. Addresses in filings.

Whenever this chapter requires that a filing state an address, the filing must state:

- (1) an actual street address or rural route box number in this state; and

- (2) a mailing address in this state, if different from the address under paragraph (1).

History. Acts 2007, No. 638, § 1.

4-20-105. Appointment of registered agent.

- (a) A registered agent filing must state:

- (1) the name of the represented entity's commercial registered agent; or

- (2) if the entity does not have a commercial registered agent, the name and address of the entity's noncommercial registered agent:

- (A) the name and address of the entity's registered agent; or

- (B) the title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the address of the business office of that person.

- (b) The appointment of a registered agent pursuant to subsection (a)(1) or (2) is an affirmation by the represented entity that the agent has consented to serve as such.

- (c) The Secretary of State shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

- (1) be kept available for at least 14 calendar days;

- (2) list in alphabetical order the names of the registered agents; and

- (3) state the type of filing and name of the represented entity making the filing.

History. Acts 2007, No. 638, § 1.

4-20-106. Listing of commercial registered agent.

- (a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the Secretary of State a commercial registered agent listing statement signed by or on behalf of the person which states:

- (1) the name of the individual or the name, type, and jurisdiction of organization of the entity;

- (2) that the person is in the business of serving as a commercial registered agent in this state; and

(3) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(b) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in § 4-20-113(d).

(c) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the Secretary of State from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is so distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(d) A commercial registered agent listing statement takes effect on filing.

(e) The Secretary of State shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the Secretary of State for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

History. Acts 2007, No. 638, § 1.

4-20-107. Termination of listing of commercial registered agent.

(a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the Secretary of State a commercial registered agent termination statement signed by or on behalf of the agent which states:

(1) the name of the agent as currently listed under § 4-20-106; and

(2) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(b) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(c) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in § 4-20-113. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

History. Acts 2007, No. 638, § 1.

4-20-108. Change of registered agent by entity.

(a) A represented entity may change the information currently on file under § 4-20-105(a) by filing with the Secretary of State a statement of change signed on behalf of the entity which states:

- (1) the name of the entity; and
- (2) the information that is to be in effect as a result of the filing of the statement of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of:

- (1) a statement of change under this section; or
- (2) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by the represented entity that the agent has consented to serve as such.

(d) A statement of change filed under this section takes effect on filing.

(e) Instead of using the procedures in this section, a represented entity may change the information currently on file under § 4-20-105(a) by amending its most recent registered agent filing in the manner provided by the laws of this state other than this chapter for amending that filing.

History. Acts 2007, No. 638, § 1.

4-20-109. Change of name or address by noncommercial registered agent.

(a) If a noncommercial registered agent changes its name, its address as currently in effect with respect to a represented entity pursuant to § 4-20-105(a), the agent shall file with the Secretary of State, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:

- (1) the name of the entity;
- (2) the name and address of the agent as currently in effect with respect to the entity;

- (3) if the name of the agent has changed, its new name; and

- (4) if the address of the agent has changed, the new address.

(b) A statement of change filed under this section takes effect on filing.

(c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

History. Acts 2007, No. 638, § 1.

4-20-110. Change of name, address, or type of organization by commercial registered agent.

(a) If a commercial registered agent changes its name, its address as currently listed under § 4-20-106(a), or its type or jurisdiction of organization, the agent shall file with the Secretary of State a statement of change signed by or on behalf of the agent which states:

- (1) the name of the agent as currently listed under § 4-20-106(a);
- (2) if the name of the agent has changed, its new name;
- (3) if the address of the agent has changed, the new address; and
- (4) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(b) The filing of a statement of change under subsection (a) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(c) A statement of change filed under this section takes effect on filing.

(d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the Secretary of State may cancel the listing of the agent under § 4-20-106. A cancellation under this subsection has the same effect as a termination under § 4-20-107. Promptly after canceling the listing of an agent, the Secretary of State shall serve notice in a record in the manner provided in § 4-20-113(b) or (c) on:

(1) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in § 4-20-113; and

(2) the agent, stating that the listing of the agent has been cancelled under this section.

(f) The Secretary of State shall note the filing of the commercial registered agent change statement in the index of filings maintained by the Secretary of State for each entity represented by the registered agent at the time of the filing.

History. Acts 2007, No. 638, § 1.

4-20-111. Resignation of registered agent.

(a) A registered agent may resign at any time with respect to a represented entity by filing with the Secretary of State a statement of resignation signed by or on behalf of the agent which states:

- (1) the name of the entity;
- (2) the name of the agent;

(3) that the agent resigns from serving as agent for service of process for the entity; and

(4) the name and address of the person to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(c) The registered agent shall promptly furnish the represented entity with notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity may have against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

History. Acts 2007, No. 638, § 1.

4-20-112. Appointment of agent by nonfiling or nonqualified foreign entity.

(a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the Secretary of State a statement appointing an agent for service of process signed on behalf of the entity which states:

(1) the name, type, and jurisdiction of organization of the entity; and

(2) the information required by § 4-20-105(a).

(b) A statement appointing an agent for service of process takes effect on filing.

(c) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(d) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the Secretary of State from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(e) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been cancelled earlier is effective for a period of five years after the date of filing.

(f) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

History. Acts 2007, No. 638, § 1.

4-20-113. Service of process on entities.

(a) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(b) If an entity fails to appoint an agent under this subchapter or if an entity that previously filed a registered agent filing with the Secretary of State no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to one or more of the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office shall be as shown in the most recent annual report filed with the Secretary of State. If the entity is not required to file an annual report with the Secretary of State, the names of the governors and the address of the principal office shall be as shown in the entity's public organic document. Service is perfected under this subsection at the earliest of:

- (1) the date the entity receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the entity; or
- (3) five days after its deposit with the United States Postal Service, if correctly addressed and with sufficient postage.

(c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service of process may be made by handing a copy to the manager, clerk, or other person in charge of any regular place of business or activity of the entity if the person served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements, as the agent has stated from time to time in its listing under § 4-20-106 that it will accept.

(e) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter.

History. Acts 2007, No. 638, § 1; 2009, No. 408, § 7; 2009, No. 814, § 1.

Amendments. The 2009 amendment by No. 408 inserted "fails to appoint an agent under this subchapter or if an entity" in (b).

The 2009 amendment by No. 814 inserted "fails to appoint an agent under this subchapter or if an entity" in (b).

4-20-114. Duties of registered agent.

The only duties under this chapter of a registered agent who has complied with this chapter are:

(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) to provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by § 4-20-105(a) in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under § 4-20-106(a).

History. Acts 2007, No. 638, § 1.

4-20-115. Jurisdiction and venue.

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

History. Acts 2007, No. 638, § 1.

4-20-116. Consistency of application.

In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

History. Acts 2007, No. 638, § 1.

4-20-117. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, (15 U.S.C. Section 7001(c)), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History. Acts 2007, No. 638, § 1.

4-20-118. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

History. Acts 2007, No. 638, § 1.

